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ABSTRACT

Title IX of the Education Amendments of 1972 prohibits sex discrimination in education programs and activities that receive Federal funds. Sex discrimination is illegal in the areas of admissions (with a few exceptions), treatment of students, and employment. This manual presents a structure within which education agencies and institutions may systematically review and evaluate their Title IX grievance procedures, and modify these procedures or develop new ones according to their needs. The manual is organized into sections that correspond to the progressive levels of understanding and decision making that should be considered in evaluating or developing a Title IX grievance procedure. The first section, presented in a question-and-answer format, reviews the basic points of grievance procedures. The second section identifies external, contextual factors that may influence the grievance process, including state laws and regulations and other agency grievance procedures. Section 3 reviews the various internal and structural decisions that must be made in a grievance procedure. The fourth section focuses on issues of grievance administration--staff training, followup and monitoring, recordkeeping, and information analysis and dissemination. Considerations related to the role of the Title IX coordinator in implementing and administering the grievance procedure are discussed in section 5. Appendices contain samples of a Title IX grievance procedure, a notification of a grievance procedure, a grievance filing form, grievance case records, and guidelines for staff; checklists for the evaluation of grievance procedures are also provided. A list of regional Offices of Civil Rights is included. (LMI)

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U.S. Department of Education
Office for Civil Rights

Title IX Grievance Procedures: An Introductory Manual

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Title IX Grievance Procedures: An Introductory Manual

U.S. Department of Education
Office for Civil Rights

Originally written by Martha Matthews and Shirley McCune, Resource Center on Sex Roles in Education, National Foundation for the Improvement of Education, Washington, D.C.; 2nd edition, revised by the Office for Civil Rights, U.S. Department of Education, 1987.

DISCRIMINATION PROHIBITED — No person in the United States shall, on the ground of race, color, national origin, age, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or be so treated on the basis of sex under most education programs or activities receiving Federal assistance.

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Title IX Grievance Procedures: An Introductory Manual

Title IX grievance procedures: the regulatory requirement

Title IX of the Education Amendments of 1972 requires that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The regulation to implement Title IX, issued by the Office for Civil Rights, Department of Health, Education, and Welfare (OCR/HEW), became effective on July 21, 1975. The Department of Education (ED) reissued the regulation in May 1980. The regulation specifies detailed prohibitions of sex discrimination in education programs and activities receiving Federal funds. Sex discrimination is prohibited in:

☐ Admissions*

☐ Treatment of students, including:

—access to programs and courses
—access to and use of school facilities
—counseling and guidance materials, tests, and practices
—vocational education
—physical education
—competitive athletics
—graduation requirements
—student rules, regulations, and benefits
—the treatment of married and/or pregnant students
—housing
—financial assistance
—health services
—school-sponsored extracurricular activities
—most other aid, benefits, or services

☐ Employment

—access to employment, including:
- recruitment policies and practices
- advertising
- application procedures
- testing and interviewing practices

—hiring and promotion, including:
- selection practices
- application of nepotism policies
- demotion, lay off, termination
- tenure

—compensation, including:
- wages and salaries
- extra compensations

—job assignments, including:
- classification and position descriptions
- lines of progression
- seniority lists
- assignment and placement

—leaves of absence, including:
- leaves for temporary disability
- childbearing leave and related medical conditions
- childrearing leave

—fringe benefits, including:
- insurance plans
- retirement plans
- vacation time
- travel opportunities
- selection and support for training
- employer-sponsored programs

—labor organization contracts or professional agreements

The regulation also provides that complaints alleging Title IX violations by a recipient agency or institution may be filed with the Office for Civil Rights. OCR has the authority to investigate complaints, or to review compliance in the absence of complaints. If violations are found, OCR must attempt to achieve compliance through informal means. If the noncompliance cannot be corrected through voluntary means, OCR may institute administrative proceedings to terminate Federal funds or refer the case to the Department of Justice for court action to effect compliance.

*Discrimination on the basis of sex in admissions is prohibited only in institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education, except public institutions of undergraduate higher education which traditionally and continually since establishment have had a policy of admitting only students of one sex. The admissions provision applies to *no private* institutions of *undergraduate* higher education.

One of the unique aspects of the Title IX regulation is its delineation of procedures which education agencies and institutions receiving Federal funds are required to implement in order to ensure and monitor compliance with Title IX requirements for nondiscrimination. Two of these required procedures—one for the designation of an employee responsible for the coordination of agency or institutional efforts to comply with Title IX, the other for the adoption and publication of an internal grievance procedure for the resolution of complaints[1] under Title IX—place responsibility on the agency or institution for the establishment and maintenance of a mechanism whereby students and employees may seek an end to and redress from illegal sex discrimination and whereby the agency or institution may continually be apprised of and evaluate possible discriminatory policies and practices and develop its own strategies or programs for the correction of discrimination.

These two provisions of the Title IX regulation read as follows:

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. *Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this . . . [regulation], including any investigation of any complaint communicated to such recipient alleging any actions which would be prohibited by this . . . [regulation]. The recipient shall notify all its students and employees of the name, office, address and telephone number of the employee or the employees appointed pursuant to this paragraph.*

(b) Complaint procedure of recipient. *A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this . . . [regulation].*

All recipient agencies and institutions were required to comply with these requirements by July 21, 1976.

With its issuance of the regulation to implement Title IX, the Department of Health, Education, and Welfare indicated that the primary intent of these two provisions was to "facilitate compliance and prompt correction of complaints without resort to Federal involvement." The existence of an agency or institutional grievance procedure does not affect the right of an individual or group to file a Federal complaint regarding possible Title IX violations with the Office for Civil Rights, ED, without utilizing the internal procedure of the agency or institution, simultaneously with the filing of an internal grievance, or after the unsatisfactory resolution of a grievance under the agency/institutional procedure. A usable and effective agency or institutional procedure can, however, minimize the complainant's need for recourse to the Federal process, and offer both the complainant and the agency or institution the prospect of an expeditious resolution of issues and the development of compliance activities which are best suited to the particular situation involved.

In order to facilitate the implementation of a grievance procedure which can most effectively meet the needs of an individual education agency or institution and its students and employees, the Title IX regulation does not specify a structure for the grievance procedure. It requires only that the procedure provide for the "prompt and equitable resolution of student and employee complaints."

Evaluating or developing a Title IX grievance procedure: how to use this manual

For education agencies and institutions with existing grievance procedures, procedures which have often been refined during years of use, the timely adoption of effective procedures may have presented little difficulty. For others, with little or no experience in grievance administration, this task may have been more difficult, resulting in a grievance procedure of uncertain effectiveness. It is to these agencies and institutions that this manual is primarily directed.

The purpose of *Title IX Grievance Procedures: An Introductory Manual* is to suggest a structure within which education agencies and institutions may systematically review and evaluate their Title IX grievance procedures, and modify these procedures or develop new ones according to their needs.

[1] The terms "complaint" and "grievance" are used apparently interchangeably within § 106.8 of the regulation to implement Title IX. This manual shall follow the regulation in this interchangeable usage: an allegation of noncompliance with Title IX made within the structure of an internal procedure shall be referred to as either a "complaint" or a "grievance." An allegation of noncompliance which is filed with the Office for Civil Rights, shall be referred to as a "Federal complaint."

The manual is organized into sections which correspond to the progressive levels of understanding and decision making which should be brought to bear on the evaluation or development of a Title IX grievance procedure.

These include:

- ☐ **Grievance Procedures: A Review of the Basics**

  This section is a brief review of basic points with regard to grievance procedures in general, presented in a question-answer format. It is designed to provide a basic introduction to the area for those whose first experience with grievance procedures may be the Title IX regulatory requirement.

- ☐ **Evaluating or Developing a Title IX Grievance Procedure: Identifying its External Context**

  One of the first steps which should be undertaken in evaluating or developing a Title IX grievance procedure is the identification of factors external to the procedure itself which may provide standards, models, or options which should influence the procedure. This section is a discussion of several such factors, ranging from state laws and regulations to other grievance procedures which may exist in an education agency or institution, and their possible implications for Title IX grievance procedures.

- ☐ **Evaluating or Developing a Title IX Grievance Procedure: Considering its Internal Structure**

  After the external contextual factors influencing a Title IX grievance procedure have been identified, the various internal structural components of the procedure may then be evaluated or developed to ensure their appropriateness and effectiveness for a particular institution or agency. The third section of this manual reviews the various internal and structural decisions which must be made in a grievance procedure, including those related to grievance initiation (who may file, what shall constitute a grievance, etc.), those related to the actual sequence of grievance processing (the number and levels of processing steps, timelines for each step, etc.), and those related to the basic procedural rights of the parties to the grievance.

- ☐ **Administering a Title IX Grievance Procedure: Ensuring its Effectiveness**

  The most carefully developed grievance procedure cannot be effective in assisting Title IX compliance efforts if it is not administered effectively. This section focuses on issues of grievance administration—staff training, follow-up and monitoring, recordkeeping, and information analysis and dissemination.

- ☐ **Title IX Grievance Procedures: the Role of the Title IX Coordinator**

  The role and functioning of the Title IX coordinator can be crucial in ensuring the effectiveness of the Title IX grievance procedure and related compliance activities. This fifth section of the manual discusses considerations related to this role—the responsibilities and tasks related to the implementation and administration of the grievance procedure, the competencies and skills needed for the performance of these tasks, and several principles regarding the functioning of the Title IX coordinator within the organizational structure of an education agency/institution.

- ☐ **Appendices: Sample Tools for Title IX Grievance Procedures**

  A sample grievance procedure and related materials (sample grievance forms, information sheets for staff and students, procedural checklists, etc.) are provided in the Appendices. They may be used by education agencies and institutions for comparing and evaluating their own procedures and materials; they may be adapted to meet particular agency/institutional needs; or they may be used in their entirety.

Title IX Grievance Procedures: An Introductory Manual is lengthy and occasionally quite detailed. It is intended for use as a continuing reference document, rather than as an overview document for a single reading only. It reflects the assumption that the investment of time and resources to develop a Title IX grievance procedure which is the most effective one possible for an institution or agency is amply justified by the benefits to be derived:

- ☐ The Title IX grievance procedure provides a method for identifying and correcting noncompliance which, however inadvertent, may be denying students or employees their rights to equal treatment without regard to sex and may ultimately jeopardize the eligibility of the education program or activity for Federal funds.
- ☐ A Title IX grievance procedure properly developed and administered can assist in the development of a climate and mechanism for mutual problem solving by the various constituencies of an agency/institution, with regard not only to Title IX compliance but also to many other issues. A grievance procedure implemented in good faith may help to avoid an adversary relationship between various groups and provide a channel for constructive and result-oriented communication.

It is with this assumption in mind that the information in this manual may be most effectively utilized.

To further assist you in administering your Title IX grievance procedure, Appendix G provides a list of addresses and telephone numbers for the Office for Civil Rights regional offices. Please feel free to contact the appropriate regional office for any technical assistance you might require or questions you might have about developing, implementing, or reviewing your grievance procedure.

Grievance Procedures: A Review of the Basics

In discussing or considering grievance procedures for Title IX complaints, it may be helpful to review some basic points with regard to grievance procedures in general. This section will focus on some of these basic points in a question-answer format. The emphasis of each answer will be upon grievances and grievance procedures in general, but each one will include a brief introduction to the issue under discussion as it relates to Title IX grievance procedures. (Issues relating to the development or evaluation of specific Title IX procedures will be discussed in more detail in the sections to follow.)

What is a grievance?

At the most general level, a grievance is simply an assertion or claim that a particular set of rules has been violated. These rules may be established by a local, state, or Federal law or regulation, or by a contractual agreement.

A Title IX grievance is one which asserts that some policy or practice of an education agency or institution is not in compliance with the Title IX regulation requirements for nondiscrimination on the basis of sex. It may take a variety of forms:

- ☐ It may involve a simple violation of the regulation, in which a policy or practice is, through lack of awareness, error, or omission, in clear noncompliance with the regulation.
- ☐ It may involve a disagreement over the meaning or interpretation of the Title IX regulation, and assert that a policy or practice which an agency or institution assumes to be nondiscriminatory is, in fact, not in compliance with regulatory requirements.
- ☐ It may involve a dispute over facts, in which the disagreement concerns not the discriminatory nature of a particular practice or act, but whether such a discriminatory practice or act took place.

Title IX grievances may involve almost any issue relating to sex discrimination in the treatment of students or employees in education programs or activities. They may relate to the actions of a particular individual, to the practices or policies of a particular school or unit within an education agency or institution, or to the practices or policies of the agency or institution as a whole. Title IX grievances may assert sex discrimination against a single individual, or against a group or class of individuals. The grievance procedure developed under Title IX must be one which can effectively accommodate such a range of possible grievances.

What is a grievance procedure?

A grievance procedure is merely a method by which an individual or group may express a complaint or grievance to the agency or institution alleged to be violating a particular rule, and receive a fair hearing and a resolution of the grievance without fear of reprisal. Its functions are twofold: it must determine whether a violation of rules has occurred, and if so, it must determine appropriate means for correcting and redressing the violation. In order to constitute a true grievance procedure, the method must be sufficiently formalized so that an interested person could refer to a written statement of the steps to take to express or file a complaint.

A Title IX grievance procedure is a mechanism whereby grievances relating to potential violations of Title IX regulatory requirements for nondiscrimination in the treatment of students or employees may be expressed without fear of reprisal. It should provide a means whereby (1) the compliance of a particular act, practice, or policy with Title IX regulation provisions is determined, and (2) the steps which will be taken to correct the policy or practice in noncompliance and to remedy any effects of discrimination upon affected individuals are specified. The Title IX regulation requires that the procedure be publicized, so that all concerned persons may know of its existence and how to use it.

What models for grievance procedures currently exist in education agencies and institutions?

Many education agencies and institutions have a history of experience with some method for dealing with the complaints of employees; a number have more recently developed methods for dealing with the complaints of students. The majority of the methods used fall into one of four types:

The "open door" policy:

The most informal method is the "open door," whereby employees or students are encouraged to discuss their concerns or dissatisfactions with a responsible administrative officer, who may range from the administrator most immediately involved (e.g., the principal of a school, the chairperson of a department within a postsecondary institution, or the supervisor of an office or employee unit) to the chief administrative officer of the agency or institution (e.g., the superintendent of schools, or the president of a college or university). This procedure is most frequently and effectively used in small agencies or institutions with relatively uncomplicated administrative structures and histories of openness and good faith on the parts of all parties involved. The disadvantage of this method is that a complainant may often find himself or herself complaining to the very person responsible for the complaint, and with little or no access to a hearing before a neutral party.

The ombudsman [sic]:

Another relatively informal method which has been used for the reconciliation of complaints is the assignment of a student or employee ombudsman to assist in fact-finding and mediation. The ombudsman is usually employed by an agency or institution but he or she maintains a neutral and flexible role, serving as investigator or mediator as a situation warrants, rather than as a consistent advocate for either the employing agency/institution or the complainant. This model is likely to be the most successful when a complaint involves fact-finding regarding a violation of explicit policy or when the issue is one which encourages concession on both sides. Its effectiveness may be limited by the fact that although the ombudsman may recommend appropriate resolutions for complaints, he or she is often without any authority to implement or enforce these recommendations. Further, the maintenance of neutrality while on the payroll of the agency or institution complained against may be a difficult task for the ombudsman.

The faculty grievance committee:

The faculty grievance committee has frequently been employed in institutions of post-secondary education to resolve complaints or disputes regarding faculty employment or treatment. Members of the faculty grievance committee are usually elected by their fellow faculty members; under this procedure, it is assumed that faculty themselves are best qualified to evaluate the grievances of their peers. The faculty grievance committee model of grievance handling usually involves the following steps:[7]

- ☐ the use of informal procedures by the grievant for the resolution of the dispute through normal administrative channels, with the absence of a prompt response as a signal to proceed to the next step;
- ☐ the discussion of the grievance with an advisor from the faculty grievance committee, who may attempt to mediate or to resolve the grievance through informal means, or may advise the grievant regarding the rest of the grievance procedure;
- ☐ the referral of the grievance to a preliminary hearing committee appointed from within the faculty grievance committee, who may: recommend that the grievance does not merit further action; resolve the grievance by negotiation; or determine that the grievance is justified and recommend specific remedial measures, which may include a formal hearing;
- ☐ the presentation of the complaint in a formal hearing, before a hearing panel selected from within the faculty grievance committee. The panel does not negotiate; it conducts a formal hearing (in which all parties have the right to representation by counsel, the right to obtain and present witnesses and evidence and the right to question opposing witnesses) and concludes with findings and recommendations. These recommendations are rejected by the institution's administration or board of trustees only for compelling reasons stated in detail.

If, after either the second or third step, the complainant considers the resolution unsatisfactory, he or she may appeal to the president of the institution.

The value of this model is greatest in those institutions where faculty share substantial responsibility for personnel policies and decisions regarding faculty employment. This model does not provide a mechanism for the resolution of complaints from nonacademic employees. Its usefulness in the resolution of sex discrimination complaints has been questioned by some, who cite the frequent numerical dominance of males on the grievance committee as an impediment to the fair processing of such complaints.

The negotiated grievance procedures (collective bargaining model):

The most formal and prescribed procedure is usually found in those education agencies and institutions which are covered by formal agreements with labor organizations. In this instance, the employer and the labor organization have negotiated a contract which prescribes policies and methods for the handling of complaints related to areas covered by the contract or agreement. The grievance procedure provides an orderly mechanism for ensuring adherence to the terms of the contract. The procedure usually consists of

[7] Margaret L. Rumbarger, "Internal Remedies for Sex Discrimination in Colleges and Universities." In *Academic Women on the Move*. Alice S. Rossi and Ann Calderwood, Eds. New York, Russell Sage Foundation, 1973, 425-438.

a step-by-step process for settlement of the grievance, beginning with informal discussions between employee and supervisor and moving to the consideration of the grievance in formal hearings at progressively higher levels of institutional or agency administration. If agreement cannot be obtained between the parties after deliberations between the grievant and the employer, the grievance process generally provides for the involvement of an outside party (an arbitrator) for the settlement of differences. In many agencies and institutions, the recommendations of the outside arbitrator are binding upon both the grievant and the employer.

This form of grievance handling is usually used in larger decentralized institutions or agencies when faculty and employees are organized in and represented by a labor organization.

Each of these models may be adapted for the processing of grievances relating to Title IX. In adapting or implementing any model, however, it should be remembered that a Title IX grievance procedure differs from procedures which have been used in the past in that the standards which must be applied in resolving grievances are those outlined in the Title IX regulation. In most existing procedures, the standards to be applied are those mandated by agency or institutional policy, established by grievance precedent, or delineated in the terms of a negotiated agreement. Under such procedures, negotiation and compromise may be sought by both parties to a grievance. In Title IX grievance procedures, the purpose must be the identification of noncompliance in agency or institutional policy or practice and the determination of corrective and remedial actions in accordance with regulatory standards. Although it is conceivable that the development of remedial actions could occur through the process of negotiation similar to that which characterizes many existing grievance models or procedures, it must be remembered that the individual's rights to nondiscrimination as specified in the Title IX regulation are *legal* rights; they are *not* negotiable or subject to compromise.

What are the basic components of a grievance procedure?

The actual grievance procedures which may be developed within any grievance model vary considerably in their specificity, and the components and provisions of various procedures reflect the differing constituencies, sizes, administrative structures, legal mandates, contractual arrangements, and grievance experience of the agencies or institutions in which they exist. Certain basic components, however, characterize most formalized grievance procedures, regardless of the model on which they are based. A number of these components are listed below. Some grievance procedures contain all of them, some contain more, and some less. The organization of provisions differs from procedure to procedure, but most procedures treat the following concerns in some manner.

I. Provisions related to the initiation of grievances
   - A. The definition of who may grieve
   - B. The definition of what shall constitute a grievance
   - C. The stipulation of time limits for the initiation of grievances
   - D. The stipulation of the manner or form in which grievances shall be initiated
   - E. The specification of any assistance available to grievants for the initiation/presentation of a grievance

II. Provisions related to the processing of grievances
   - A. The number and levels of steps for grievance processing
   - B. The form of grievance presentation or processing at each step
   - C. Requirements for notification of involved parties at various phases of the grievance process
   - D. Timelines governing the various actions or steps within the grievance process
   - E. Procedures which shall govern the conduct of grievance meetings or hearings at any step of the grievance process, e.g.,
     - —the minimum time allocated for the grievance hearing;
     - —the time allocated to each party
     - —the right of each party to representation
     - —the right to present witnesses and evidence
     - —the right to question opposing witnesses
     - —the moderation of hearings
     - —the right to confidential or public grievance meetings or hearings
   - F. Requirements for the filing or submission of written information by the grievant or the respondent
   - G. The specification of the forms which grievance decisions shall take at each step
   - H. The roles and/or the selection of persons involved in grievance processing

III. Provisions related to the basic procedural rights of the parties to the grievance
   A. The grievant's right of appeal
   B. The right of all parties to impartial grievance decisionmakers
   C. The access of grievants to relevant agency/institutional records
   D. Protection of grievants from harassment and retaliation
   E. Confidentiality of grievance proceedings

Any or all of these components could be included in a Title IX grievance procedure. The provisions included, the content of each, and the specificity of the grievance procedure would vary with the particular characteristics, needs, and experience of the education agency or institution implementing the procedure.

How should grievance procedures provide for complaints of sexual harassment?

The Title IX regulation provides protection against acts of sexual harassment, requiring recipients to have available grievance procedures called for by section 106.8 for allegations of sexual harassment. Institutions may choose to investigate and resolve sexual harassment complaints that would constitute a violation of Title IX either under their general grievance procedures or specific sexual harassment grievance procedures. Frequently, allegations of sexual harassment raise sensitive issues that require confidentiality. If the identity of the complainant and/or the respondent and the allegations themselves were made public prior to any determination, serious problems for the individuals involved, as well as the institutions, could result. Thus, a grievance procedure that differs from the standard grievance procedure, at least during the early stages of proceedings, may be appropriate. Section 106.8 of the Title IX regulation requires that grievance procedures: be established and published that encompass complaints of sexual harassment; provide for prompt and equitable resolution of complaints of sexual harassment; and be available to complainants (although a complainant is not required to use the grievance procedure).

Evaluating or Developing a Title IX Grievance Procedure: Identifying its External Context

As an education agency or institution moves to evaluate an existing Title IX grievance procedure or to develop a new one, one of the first activities which should be undertaken is the review or determination of the *external* context of the procedure. Many agencies and institutions are accustomed to considering grievance procedures only in relation to their *internal* characteristics—the structure of the procedure itself, the number of levels or steps provided, the timelines governing various activities, etc. Although such internal characteristics are ultimately of greatest significance, before decisions may be effectively made about the appropriateness and desirability of various internal components of the procedure for a particular agency or institution, it is necessary to identify any factors external to the procedure itself which should shape such decisionmaking.

External factors may range from those which establish actual standards or models for a grievance procedure, to those which relate to the goals or priorities of an individual agency or institution. They may be grouped within several general categories:

- ☐ any standards regarding grievance handling imposed by State, local, or institutional laws, regulations, contracts, or policies
- ☐ the goals and priorities of the agency or institution with regard to the implementation of a grievance process
- ☐ the internal characteristics of the agency or institution which might bear on the grievance procedure
- ☐ the coverage, form, and effectiveness of any grievance procedures which currently exist within the agency or institution

Each of these groups of factors will be discussed briefly in this section.

Existing standards regarding grievance handling

The Title IX regulation specifies no standards for Title IX grievance procedures beyond the requirement that they should provide for "prompt and equitable resolution of complaints." Standards which should be considered by education agencies and institutions may, however, be imposed by a number of sources.

State collective bargaining laws and related rulings:

Many States currently have collective bargaining laws which relate to the rights of employees to organize and to engage in collective negotiations regarding wages and conditions of labor. In some States, these laws, or judicial or administrative rulings or interpretations promulgated under these laws, specify standards for grievance procedures to be used by employees covered under negotiated agreements. These laws, rulings, or interpretations may relate to the definition of issues accepted as "grievable" under negotiated procedures, or they may delineate standards affecting the grievance procedures provided for covered employees. Where some or all of the employees of an education agency or institution are covered by collective bargaining laws which contain prescriptions relating to grievances and grievance processing, these prescriptions should be examined for their relevance to the proposed or existing Title IX procedure.

For example, in some instances, issues of discrimination have been ruled not grievable under procedures negotiated in collective bargaining agreements because they are covered under Federal law and eligible for resolution through Federal complaint procedures. Any agency or institution which considers incorporating Title IX grievances within an existing negotiated grievance procedure (an option which will be discussed in greater detail later in this manual), should, of course, ascertain whether such a ruling exists in its State or in relevant arbitration precedent.

State and/or local antidiscrimination laws or regulations:

Many States or localities now have antidiscrimination statutes or administrative regulations which prohibit race and/or sex discrimination against the students or employees of education agencies and institutions, among others. Many of these statutes or regulations specify a process whereby complaints of discrimination may be heard: some outline a specific process to be administered by the State or locality; others require only the development of a procedure by all the governmental units or subunits of the state or locality, including publicly supported education agencies and institutions.

Where such a procedure is specified by statute or regulation, an agency or institution might wish to incorporate Title IX grievance resolution within this procedure, or to develop a similar or parallel Title IX procedure based on this model or the standards specified in the statute or regulation.

Student rights and responsibilities statutes and/or administrative regulations:

In recent years, increasing numbers of State legislatures and State education agencies have enacted legislation or promulgated regulations which outline the rights and responsibilities of students in publicly supported education agencies or institutions, and require the implementation of a mechanism or process for the resolution of complaints regarding possible violations of these rights. In several States, the levels at which a student complaint must be processed (including, in at least one State, the provision of a final appeals level at the State education agency)[1] are specified by administrative regulation or guideline. In the absence of conflicting Federal requirements, such State specifications establish standards for the Title IX grievance procedure, or provide a procedure within which student complaints under Title IX could be resolved.

Agency or institutional contracts with employee organizations:

Many education agencies or institutions are subject to contracts with employee organizations which specify procedures under which employees may present grievances relating to the terms and conditions of their employment.

Where a grievance procedure is delineated by contractual provision, it may be used as a model for the implementation of Title IX grievance procedures. Where the contract itself also contains a nondiscrimination clause, employees covered under the contract must be permitted to utilize this procedure for the presentation of Title IX complaints. Where such a nondiscrimination clause does not exist, it is conceivable that contract language could prohibit the unilateral implementation of any grievance procedure (including one for Title IX grievances) without the involvement of the employee organization. All these possibilities should be considered by an education agency or institution in developing or reviewing a grievance procedure under Title IX.

It is important to note that although any or all of the sources mentioned above can provide standards for the grievance procedure implemented under Title IX, none can provide criteria for the substantive resolution of Title IX grievances or complaints. These are provided only in the regulation to implement Title IX, issued by the Office for Civil Rights, ED, in clarifying memoranda or rulings issued by OCR, and in judicial decisions related to Title IX.

In addition to the major sources previously discussed, many agencies or institutions may have existing policies which might bear on the structure or provisions of the grievance procedure (e.g., policies regarding access to or confidentiality of various records). While these may be difficult to specify prior to the development of a procedure or experience with its implementation, every effort should be made to identify such relevant policies and to ensure the consistency of the Title IX grievance procedure with these policies.

Agency/institutional goals and priorities

The most fundamental goal for the development of a grievance procedure for the resolution of Title IX complaints is, of course, to fulfill the Title IX regulatory requirement for the development of such a procedure and thereby to ensure compliance with the substantive provisions of the regulation regarding nondiscrimination. A Title IX grievance procedure effectively designed and implemented can also serve a number of other functions for education agencies and institutions and their students and employees.

For example, a grievance procedure which provides for multiple levels of grievance hearing can increase communications between various administrative levels of an agency or institution, as well as between administrators, students, and employees. The involvement of community members, students, or employees on grievance hearing panels can serve to develop broader understanding and support of agency or institutional responsibilities, practices, and policies related to Title IX. A grievance procedure developed for the resolution of Title IX complaints could also be used as a mechanism for the consideration of complaints related to racial or ethnic discrimination. Processes or channels developed for the implementation and monitoring of any changes necessitated by Title IX grievance resolutions could be extended to the monitoring of other agency or institutional programs. These examples

[1] New York State Department of Education. "Grievance and Appeals Procedures." In *Student Rights and Responsibilities Revisited: Current Trends in School Policies and Programs*. National School Public Relations Association. Arlington, Virginia, 1976, 26-27.

indicate only a few of the auxiliary functions which may be performed by a Title IX grievance procedure.

In developing or evaluating Title IX grievance procedures, education agencies and institutions should delineate or review their goals, needs, and priorities related to such functions. Consideration might be given to such areas as:

☐ Communications among various groups and constituencies within the particular agency or institution:

—What levels and channels of communication currently exist?

—What changes with regard to levels and channels of communication would be desirable (if any)?

—In what ways might such changes be facilitated by the Title IX grievance procedure or its particular components?

☐ The existing understanding of Title IX requirements and current agency/institutional policies and programs relating to compliance:

—What levels of understanding currently exist among various groups and constituencies of the agency or institution?

—How might the understanding of various groups be increased by means of the Title IX grievance procedure?

☐ The availability and/or adequacy of any existing procedures by which students and/or employees may seek resolution of complaints of other forms of discrimination:

—What other procedures, if any, currently exist for the resolution of discrimination issues or similar concerns?

—In what ways, if any, could these procedures be improved?

- extended to provide greater coverage?
- simplified for greater usability?
- modified to provide greater assurance of due process for all parties?
- streamlined to provide greater ease of administration?

—How could any needs for improvement be reflected in or addressed by the grievance procedure used for the resolution of Title IX complaints?

☐ The availability and adequacy of existing mechanisms for monitoring various forms of program implementation in the agency or institution:

—What mechanisms, if any, exist for the monitoring of various programmatic activities or changes?

—In what ways, if any, might such mechanisms be improved?

- modification or increased delineation of reporting channels?
- development or improvement of reporting forms?
- specification or modification of reporting schedules?
- development or improvement of procedures or forms for giving or soliciting feedback on reports submitted?
- increased access to or dissemination of reports?

—How might any needs for improvement be reflected in or addressed by the Title IX grievance procedure?

Other areas for consideration would be determined based on the unique needs of the agency or institution.

Although a Title IX grievance procedure may certainly be implemented without consideration of these and similar questions relating to agency/institutional needs, such consideration can assist agencies and institutions in specifying their own goals and priorities and developing a procedure which can serve them and their students and employees most effectively.

Relevant internal characteristics of the agency/institution

Closely related to the identified needs, goals, and priorities of the agency or institution are its more objective internal characteristics which bear on any Title IX grievance procedure implemented. These include such characteristics as:

☐ **The size of the institution or agency and its physical centralization or decentralization:**
Size and physical centralization/decentralization could determine the number of sites desirable for filing grievances.

☐ **The administrative structure of the agency or institution and the allocation of authority and responsibility:**
Administrative structure and allocation of authority could determine the number and levels of steps in the processing of grievances.

☐ **The age range of the students to be served by the grievance procedure:**
The types of assistance or information which might be needed by elementary/secondary school students or parents could differ from those needed by postsecondary students.

☐ **The range and types of employees within the agency or institution:**

If the agency/institution has a great variety of employees subject to very different evaluation criteria or supervisory structures, the grievance procedure, or procedures, should accommodate such a range in some manner.

☐ **The existence of any other grievance procedures, and their coverage and form(s):**

Other grievance procedures may offer structures for the incorporation of Title IX complaints.

☐ **The availability, experience, and knowledge of staff:**

In assigning various ongoing Title IX grievance responsibilities to staff, assessment must be made of time to be allocated to various responsibilities by any staff member, and assignments made accordingly. In some cases, the assignment of a task to a single person or to several persons may need to be reflected in the grievance procedure itself, e.g., the number or positions of persons with whom a complaint may be filed. Further, if a member or members of the staff have had significant experience in the implementation of a particular grievance processing model, the agency or institution might wish to consider testing such a model for its suitability for the processing of Title IX complaints.

Existing agency/institutional grievance procedures

Although several references have been made in this section to grievance procedures which may exist in education agencies or institutions for the resolution of complaints other than those relating to Title IX, because of the potential significance of these procedures in the development or evaluation of Title IX grievance procedures, several relevant concerns will be reiterated or summarized in this subsection.

Procedures which exist for the processing of complaints or grievances other than those related to Title IX may provide valuable information or resources to agencies and institutions in the implementation of Title IX procedures. They may suggest principles or models to be followed in the Title IX procedure, or they may actually provide structures in which Title IX complaint resolution may be easily and effectively incorporated.

In order to determine the potential relevance of other grievance procedures to Title IX efforts, agencies and institutions should consider:

☐ Whether these procedures provide coverage, either separately or together, for:

—administrators
—faculty/certificated staff
—other professional staff (nonteaching)
—nonprofessional/classified staff
—students

☐ Whether each of these procedures provides for the *resolution* of complaints or grievances (i.e., the implementation of necessary corrective and remedial action) rather than merely for their expression.

☐ Whether each of these procedures specifies timelines which assure the *prompt* resolution of complaints or grievances. (The applicable Federal procedural regulation requires that Title IX complaints submitted to the Office for Civil Rights, ED be filed within 180 calendar days of the alleged violation. It is advisable therefore that all agency/institutional procedures used for the processing of Title IX complaints require significant processing steps well within this time period. It is acknowledged, however, that most agency/institutional procedures must be calculated in working days. Those procedures which provide a substantial time period for the initial filing of grievances and which provide time intervals for the completion of various steps designed to ensure equitability and due process (e.g., notifications regarding all grievance activities, selection of grievance hearing panels, appeals to progressive levels of decisionmaking, etc.) may exceed 180 calendar days between the occurrence of the alleged violation and the issuance of the final decision at the last level of appeal. It is likely that such procedures would be considered to meet the requirements of promptness if: significant processing steps are required within 180 calendar days, and no time intervals specified within the procedure exceed reasonable expectations for promptness.

☐ Whether each of these procedures is free from language (or related judicial, or administrative stipulations) which would prohibit its use for the resolution of Title IX complaints.

If the answer to each of these four questions is yes, then the procedures which are used for the resolution of other complaints or grievances may be used for the processing of Title IX complaints. Agencies and institutions should review these procedures in order to ensure that they provide due process to all parties involved, and to ensure that past experience in their implementation indicates their usability by potential grievant groups and their feasibility for efficient administration. Where use of such previously existing procedures is possible, it should minimize the time required to ensure the understanding of the Title IX grievance process by all parties concerned.

If in answering these questions, however, an agency or institution determines that only certain groups of potential Title IX grievants are covered by adequate existing procedures, new procedures must be implemented to cover any groups otherwise omitted. An agency or institution may choose to:

- ☐ incorporate Title IX complaint resolution within all possible existing procedures and implement a new procedure or procedures only for all groups not otherwise covered, or
- ☐ implement a separate procedure for the resolution of Title IX grievances, which may be used by all potential grievant groups.

If the second option is selected, it must be remembered that persons with recourse to other procedures (for example, employees covered under a negotiated contract which contains a nondiscrimination clause and a clause establishing a grievance procedure) must retain their right to pursue resolution of Title IX grievances through these channels.

Where the Title IX grievance procedure is only one of several grievance procedures in an agency or institution, it may be helpful to make all procedures as similar as possible, in order to facilitate administration and, in some cases, coordination of the procedures. This should be done, of course, only to the extent that all procedures remain effective for the purposes to which they are intended.

One point which must be emphasized with regard to the utilization of other grievance procedures for the resolution of Title IX complaints involves the use of binding arbitration. Many grievance procedures, particularly those negotiated in collective bargaining or professional agreements, may provide for submission of grievances unresolved at earlier grievance levels to binding arbitration, under which the recommendations of a neutral third party are binding upon both the grievant and the respondent agency or institution. Numerous judicial precedents developed under other Federal antidiscrimination law hold, however, that grievants protected by such antidiscrimination laws *do not* relinquish their right to file complaints of discrimination with appropriate Federal agencies, or to bring private court suit. It is clear that, according to such precedents, submission of Title IX grievances to binding arbitration does not prohibit the grievant receiving an unfavorable ruling from resorting to the courts or to the Office for Civil Rights for redress.[4]

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[4] The individual's right to bring private court suit under Title IX without prior use of the Federal complaint procedures was upheld by the U.S. Supreme Court in *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

Evaluating or Developing a Title IX Grievance Procedure: Considering its Internal Structure

After the external factors affecting the Title IX grievance procedure have been identified or reviewed, the next activities in the evaluation or development of the procedure are those which relate to the examination or determination of the internal structure or characteristics of the grievance procedure itself. Three major groups of considerations should be examined:

- ☐ considerations related to the initiation of grievances—who may grieve, what shall constitute a grievance, in what form a grievance shall be filed, etc.
- ☐ considerations related to the processing of grievances—the number and levels of grievance processing, timelines governing the various steps in the grievance process, procedures governing the conduct of grievance hearings, etc.
- ☐ considerations related to the basic procedural rights of the parties to the grievance—the grievant's right to appeal, the right to decision by an impartial authority, etc.

These considerations will be discussed in detail in this section.

In examining these considerations, and evaluating or developing a Title IX grievance procedure, it is important that two criteria which should influence decisionmaking with regard to any issue related to the grievance procedure be kept in mind.

Grievance procedures should be designed in order to provide equitability and due process to all parties involved in the grievance.

The Title IX regulation requires that the grievance procedure provide for the equitable resolution of complaints of Title IX violations. The term "due process" has often been used to refer to one standard for the equitability of such procedures. Due process requires simply that all persons involved in a grievance—both the grievant and the respondent (the party alleged to have violated Title IX requirements)—be provided equal opportunity to present their case and to receive a fair hearing. Equitability and due process are increased by such grievance provisions as those which require written recording of grievances and grievance answers, those which require notification of all involved parties with regard to the various actions within the grievance process, those which guarantee the right of representation to all parties, and those which guarantee grievants the rights of appeal.

Grievance procedures should be designed to make their utilization and implementation as simple and prompt as possible.

No matter how equitable the grievance procedure, if grievants experience difficulty in using it and staff in implementing it, it cannot contribute effectively to Title IX compliance efforts. Simplicity in utilization and implementation are of major value in any procedure. Simplicity and promptness need not, however, be a matter of brevity in the written procedure, or of a single-step process for grievance resolution. Rather, they may be provided through a grievance procedure in which all steps and activities are clearly delineated and responsibilities and timelines are specified, and in which assistance and information with regard to Title IX and grievance matters are made available to all parties—grievant, respondent, and decisionmaker.

Each of these points should be remembered as the various considerations relating to the internal characteristics of a Title IX grievance procedure are discussed and as agencies and institutions move to evaluate or develop their own procedures.

Considerations related to the initiation of grievances

The definition of who may grieve:

The general definition of who is eligible to utilize a Title IX grievance procedure is derived from the Title IX regulation—any student or employee of an education agency or institution may file a Title IX grievance. Under Federal complaint procedures, discrimination complaints may be filed with the Office for Civil Rights not only by individual students and employees, but also by groups or classes of such persons, and by individuals or groups acting on their behalf. Agencies and institutions who wish to encourage use of the internal Title IX grievance process and minimize the filing of Federal complaints with the Office for Civil Rights should specify the eligibility of groups or classes of affected persons, or of individuals or

groups acting on behalf of such persons, to use the internal Title IX grievance procedure.

If separate grievance procedures are maintained for various eligible grievant groups (i.e., students, faculty/certificated staff, nonprofessional/classified staff), the definition of who may grieve under each procedure should, of course, specify the particular group eligible under each. If separate procedures exist, agencies/institutions must ensure that all potential grievant groups are covered under some procedure.

The definition of what shall constitute a grievance:

The definition of what shall constitute a grievance is again derived from the regulation to implement Title IX – a grievance is any complaint which alleges that an education agency or institution receiving Federal funds (or an official or employee acting on its behalf) has, through policy, procedure, or practice, acted in a way which is prohibted under Title IX or its implementing regulation.

The stipulation of time limits for the filing of grievances:

The stipulation of a time limit for the filing of a formal grievance can protect both the grievant and the education agency or institution from attempting to ascertain the validity of a grievance long after necesssary evidence or witnesses are unavailable. The time limit should be long enough, however, to avoid any appearance of grievance obstruction by the agency or institution. Any stipulation of time limits should clearly state whether the number of days specified refers to working days or calendar days.

The stipulation of the manner or form in which grievances shall be filed:

Any stipulation regarding the manner or form of grievance filing should contain at least three components:

- ☐ an indication of whether the grievance should be written or oral
- ☐ an indication of what information must be provided in the grievance
- ☐ an indication of the person or persons with whom the grievance must be filed

A grievance may be filed either orally or in writing, depending upon the preference of the agency or institution. In most instances, the initial filing of a written grievance is strongly desirable; it can assist the grievant in clarifying her/his concerns, it eliminates potential distortions in hearsay reporting and provides all parties with a common point of reference, and it ultimately saves processing time. Care should be taken, however, to make any writing required in a grievance as simple as possible, and to provide some form of assistance to persons who may have difficulty in written expression.

Any requirements imposed regarding the information to be included in a grievance are at the discretion of the agency or institution. Federal procedures require that any complaints filed with the Office for Civil Rights contain the following information:

- ☐ the name, address, and signature of the complainant
- ☐ a sufficient description of the alleged discrimination to let OCR know what occurred
- ☐ the identity of the injured parties (where different from the complainant)
- ☐ the name and address of the institution alleged to have discriminated
- ☐ the approximate date(s) on which the alleged discrimination took place
- ☐ sufficient background information to permit ED to commence an investigation

Agencies and institutions might adapt these requirements to make them more appropriate to internal use. A Title IX grievance filed within the internal procedure might require the name of the grievant; the nature and date of the alleged Title IX violation; and the name(s) of any staff members responsible for the action (if appropriate). Information regarding any other persons injured by the alleged violation and any relevant background information might be included at the option of the grievant. In addition, grievants might be requested to specify the corrective or remedial action desired, if known.

Agencies and institutions may wish to develop a simple grievance form in order to standardize the filing of grievances, expedite their handling, and facilitate necessary recordkeeping.

The person or persons with whom grievances may be filed may be determined by the agency or institution. Because the regulation to implement Title IX requires that the employee designated by the agency or institution as Title IX coordinator shall coordinate the investigation of complaints filed under the Title IX grievance procedure, it is desirable that the Title IX coordinator should receive copies of all Title IX grievances filed. In large agencies and institutions, however, it may be desirable to designate a number of persons with whom such grievances may be filed. In a local education agency, for example, it may be

more convenient for students and employees to file grievances at their own school buildings rather than at the central administrative offices. A person in each building—e.g., the assistant principal or a pupil personnel officer—might be designated to receive Title IX grievances. In a large institution of postsecondary education, it is advisable that each administratively separate unit—e.g., the college of arts and sciences, the graduate school of business, the school of education, etc.—have at least one person within it designated to received grievances—e.g., the assistant dean of a school, the school's student personnel officer, or other appropriate official.

Designating a number of persons who can receive grievances increases the accessibility of the grievance procedure to students and employees. If this is done, however, it is important that all grievances filed be reported to a centralized place, such as the office of the Title IX coordinator, and that those persons who are designated to receive grievances have a thorough understanding of the Title IX regulation, the operation of the grievance procedure, and the procedures for the referral of grievances for actual processing.

The specification of any assistance available to grievants for the initiation or presentation of a grievance:

The types of assistance which are often made available to potential grievants include:

- ☐ "pregrievance" meetings held between the grievant and representatives of the agency or institution prior to the formal filing of a written grievance
- ☐ assistance in the preparation of written grievances

Many grievance procedures incorporate pregrievance discussions between the relevant parties as a method of achieving possible resolution of the issues before written grievances are filed. The purposes of such pregrievance meetings are to clarify the nature of the grievance and its relationship to Title IX, to ensure that there is some agreement as to the points of difference between the grievant and the respondent, and to determine that these differences cannot be resolved through informal discussions.

The provision of pregrievance meetings within a grievance process can be of benefit both to potential grievants and to respondents, as they offer a means by which complaints may be resolved with minimal time and effort expended by both parties. Some cautions should be kept in mind by agencies or institutions considering inclusion of such meetings in the grievance process, however. First, pregrievance meetings must be handled sensitively and in good faith, and care must be taken to avoid giving any impression of efforts to dissuade potential grievants or to obstruct the filing of formal grievances. Second, persons handling such pregrievance meetings should also be sensitive to those instances of potential discriminatory policy or class action grievances in which pregrievance meetings may not be appropriate and may, in fact, retard grievance resolution. In any case, the scheduling of pregrievance meetings should not be mandatory prior to grievance filing. All grievants should have the right to immediate recourse to formal procedures in which due process is ensured.

When the filing of a written grievance is required by an agency or institution for the initiation of the grievance process, provisions are frequently made for assisting grievants in the preparation of the written grievance. All students and employees, regardless of their skills in written expression, are protected under Title IX, and it is important that a requirement for the filing of written grievances, while facilitating grievance administration and recordkeeping, not serve to obstruct the filing of grievances. Assistance might be provided by the Title IX coordinator, or by volunteers with relevant skills and interests.

Both the availability of any assistance to grievants in the initiation of grievances and the position(s) of the persons responsible for the provision of such assistance should be clearly specified within the grievance procedure.

Considerations related to the processing of grievances

The number and levels of steps for grievance processing:

One of the most fundamental issues which must be examined with regard to any grievance process is the number and levels of steps at which each grievance may be heard. Basic to most formal grievance procedures is the provision that grievances shall move from an initial level (often informal) involving only the grievant, the person immediately responsible, and a designated grievance decisionmaker, through a series of appeal steps involving progressively higher administrative levels, up through the governing body of an agency or institution. Such a provision of progressive grievance steps is designed to ensure the consideration of grievances by persons who are differentially involved in or affected by the outcome of the grievance resolution.

The crucial point to remember in determining the number and levels of grievance processing appropriate to an agency or institution is that each step should provide an opportunity for actual grievance resolution. Only those persons with authority to mandate action to correct or remedy any discrimination identified should be involved in decisionmaking at these grievance steps. The specific persons involved at each level would, of course, vary with the administrative structure and the distribution or delegation of authority within a particular agency or institution.

Beyond this point, it is also useful to minimize the number of steps involved in grievance processing. Three or four steps can, in most agencies or institutions, ensure the hearing of grievances at progressive levels of authority. Steps exceeding this number may, at best, prolong the grievance unnecessarily, sending the grievant from administrator to administrator without providing final resolution, or, at worst, may actually function to obstruct the filing of grievances by destroying the advantages of simplicity and timeliness usually offered by internal grievance procedures.

One step which agencies and institutions might consider is a step involving a several-person hearing panel, composed of a variety of neutral parties. Such hearing panels have been frequently employed for processing faculty grievances in institutions of postsecondary education; they can also parallel the functioning of the neutral arbitrators mandated in many procedures negotiated under collective bargaining agreements. Such a hearing panel might be composed of persons with varying positions in the agency or institution (e.g., a student, a teacher or a faculty member, and an administrator), or it might also include a parent (in a local education agency) or a member of the governing body of the agency or institution. The diverse composition of such a panel can be a persuasive demonstration of the good-faith efforts of the agency or institution to ensure neutral and fair processing of all grievances.

The final step for grievance processing is at the discretion of the education agency or institution. Because the existence of the Federal complaint procedures means that the grievant may in no way be bound by the resolution of the internal Title IX procedure, it is anticipated that few education agencies or institutions would select as a final step any which would result in a binding decision made by other than a member or members of the highest governing body of the agency (e.g., the board of education) or institution (e.g., the board of trustees). (An exception to this would occur in those cases where employees are guaranteed the right of submission of discrimination grievances to binding arbitration by the terms of a collective bargaining agreement.)

An example of a logical sequence of steps for grievance processing within a local education agency (and the person with decisionmaking authority at each) might include:

☐ **Step 1—Building level**
Authority: principal of the school

☐ **Step 2—Central administrative level**
Authority: superintendent or assistant superintendent

☐ **Step 3—Governance level**
Authority: the board of education (either in its entirety or represented by designated members)

A similar example for an institution of postsecondary education might utilize the following steps:

☐ **Step 1—Departmental or school level**
Authority: department chairperson or dean of the school, or, more specifically:

—for students: the student affairs officer for the department or school
—for faculty: the chair of the department or the dean of the school
—for other staff: supervisor for administrative services

☐ **Step 2—Central administrative level**
Authority: the president or dean of the institution for students or faculty; the director of relevant service area for other staff

☐ **Step 3—Governance level**
Authority: the board of trustees (either in its entirety or represented by designated members)

In either a local education agency or a postsecondary institution, a grievance hearing panel might be constituted as an alternative method for grievance processing at either the central administrative level or the governance level. If such an alternative were to be selected, a hearing panel representing various constituencies (students, teachers/faculty, administrators, members of the governing board) could be selected by the hearing authority, selected by the parties to the grievance, or elected by their peers. This panel would hear the grievance and, based on a vote of the majority, make a report of findings and recommendations for any necessary corrective action to the grievance authority. Such recommendations would be considered compelling, and would be rejected by the grievance authority only for reasons stated in detail.

The provision of multiple steps in the grievance procedure *does not* require the use of early level steps when these are inappropriate. For example, complaints or grievances involving groups or classes of students or employees, or those alleging that an agency- or institution-wide policy or

practice is in violation of Title IX requirements would logically be referred to the central administrative level (step 2 of the examples given above) for first processing. Any staff members responsible for receiving grievances when filed—the Title IX coordinator and/or other designated employees—should be knowledgeable regarding the referral of grievances to levels appropriate to their nature.

The provision of a sequence of progressive steps or levels of grievance heaving within the grievance procedure *does* build in an appeals process. When a grievant is dissatisifed with the grievance decision made at one level, she/he may appeal the decision by moving the grievance to the next step. (It is desirable that a grievance procedure require that this request be made in writing and within a specified time period.) This is the primary advantage of providing multiple levels or steps within the grievance process: it ensures adequate consideration of the grievance by persons of varying degrees of involvement, expertise, and authority, and increases the opportunities for ensuring fair and equitable resolution of complaints.

The provision of multiple steps can also provide agencies and institutions with other advantages. It is a means of:

- ☐ demonstrating good-faith commitment to equitable grievance resolution to students, employees, and the community
- ☐ providing for the routine involvement of administrative staff at various levels as a means of increasing their knowledge and capability for identifying discriminatory policies, practices, and programs, and for maintaining effective monitoring of programs for nondiscrimination
- ☐ providing for the involvement of persons involved in institutional or agency governance as a means of increasing their knowledge and capability for the development and monitoring of nondiscriminatory policies, practices, and programs

The form of grievance presentation or processing at each step:

Once the number and levels of grievance processing steps are determined, the agency or institution must consider the form which the presentation and processing of grievances should take at each step. The form for presentation may range from a completely oral presentation, to a completely written presentation, to a combination of both within a formal hearing. Although specifications regarding each step should be sufficiently flexible to accommodate a wide range of grievance situations, some specificity regarding the procedures to be followed serves to protect both parties to the grievance.

If a formal grievance is to be presented and considered only orally (oral presentation and response are, in most cases, more appropriate to pregrievance meetings than to formal grievance processing), it is critical that some procedure be developed to ensure adequate recording and documentation of the grievance and the response. A written summary of proceedings might be prepared for signature by both parties to the grievance. Such documentation would be important for the clarification of grievance issues at subsequent processing steps, as well as for ongoing agency or institutional recordkeeping.

Some agencies and institutions have utilized a procedure which, at least at lower processing levels, relies entirely upon submission of a written grievance to the specified person, who in turn responds in writing to the grievance. While such a technique may be beneficially used at the pre-grievance stage to assist in the delineation and clarification of grievance issues, it is probably not desirable at a later stage if it denies opportunity for the presentation of evidence relevant to either side of the grievance issue, and for the back-and-forth questioning of parties which may be critical to resolution of a grievance.

In most grievance procedures, as the levels of administrative authority increase in successive grievance steps, the formality and specificity of the written provisions related to the grievance hearings also increase. Procedures beginning with a discussion of issues between the two parties most immediately involved and a third person with the authority to mandate change often culminate in a formal hearing before a grievance hearing panel or a governing body.

A common format for conducting a formal hearing would include:

- ☐ general presentation of the grievance by the grieving party(ies), who outlines the situation and demonstrates how it is in noncompliance with the provisions of the Title IX regulation (In many instances the grievant specifics a desired form of redress in the opening statement.)
- ☐ general presentation regarding the grievance allegation by the respondent, who outlines the situation and demonstrates how the situation is or is not in noncompliance with the provisions of the Title IX regulation
- ☐ presentation of evidence, witnesses, and other documentation by the grievant, and questioning by the respondent
- ☐ presentation of evidence, witnesses, and other documentation by the respondent, and questioning by the grievant

- ☐ summation by the grievant
- ☐ summation by the respondent

The specification of the forms to be used for the presentation and processing of grievances at each level or step is at the discretion of the education agency or institution. The primary consideration in the specification should be the assurance of due process for all parties involved.

Requirements for the notification of all involved parties regarding the various phases of the grievance process:

Once a grievance has been initiated and the grievance process has begun, the timely notification of all involved parties regarding all developments in the grievance process is necessary to assure due process for all parties.

Notification will be necessary at a number of phases within the process:

- ☐ After a formal grievance has been filed, all parties involved in allegations of Title IX violations must be notified regarding the nature of the grievance filed.
- ☐ When a grievance meeting or hearing has been scheduled at any level of the grievance procedure, both the grievant and the responding party(ies) must be notified of its time and place, as well as any procedural rules which would guide their conduct (discussion of such rules follows later in this section).
- ☐ After a grievance decision or ruling has been made at any stage of the grievance process, all parties should be notified of this decision, and the grievant should be notified of her/his right to appeal the decision to the next level of processing.

These are general guidelines for notification provisions; the appropriate points for notification and the staff responsible for making or ensuring notification will vary according to the levels and structures of the grievance procedure implemented by a particular agency or institution. Provisions regarding notification should be clearly specified within the written grievance procedure.

Timelines governing the various actions or steps within the grievance process:

Prompt processing and resolution of grievances at each phase or step of the grievance process is essential to the effectiveness of any grievance procedure. It protects the rights of both the grievant and the agency or institution. Lengthy delays at any point may make resolution more difficult and may extend the grievance process beyond the bounds of "promptness" required by the Title IX regulation.

Time limits should be specified for virtually every action within the grievance procedure, including:

- ☐ the filing of a formal grievance after the occurrence of a possible Title IX violation
- ☐ the notification of persons against whom Title IX violations are alleged regarding the filing of a Title IX complaint against them
- ☐ the scheduling and the conducting of any appropriate grievance meetings or hearings
- ☐ the provision of a decision regarding the grievance after any grievance step
- ☐ the filing by the grievant of the complaint for processing at the subsequent grievance level (appeal of grievance decisions)

In most agencies and institutions, five working days are the maximum amount of time which should elapse between any two grievance activities or steps. (For example, a grievance decision must be issued within five days of a grievance meeting or hearing; an appeals hearing must be scheduled within five days of the receipt of the grievant's appeal.) In most cases, especially those in which a large number of activities and steps is involved, this time should be reduced as much as possible.

Provision should also be made for waiver of established timelines upon the mutual consent of the parties to the grievance.

Procedures which shall govern the conduct of any grievance meetings or hearings held at any step of the grievance process:

Although grievance meetings or hearings should be conducted in an informal manner which will allow persons without legal training or extensive preparation to participate fully, it is desirable that some general procedures for such meetings or hearings be specified in advance. Such specification has several advantages:

- ☐ It can provide all parties to a grievance with a common framework from which to operate.
- ☐ It provides all parties to a grievance with guidelines for the preparation and presentation of their grievance information.
- ☐ It can help to assure all parties to a grievance of due process in grievance consideration.

☐ It ensures that all grievances are handled in a similar fashion.

In general, procedures to be used in a grievance meeting or hearing should be organized around the two major purposes of the grievance process—the determination of whether the policy, procedure, or practice alleged to be discriminatory is in fact in violation of Title IX requirements, and, if so, what constitutes appropriate corrective action and redress to the grievant. More specifically, provisions regarding meeting or hearing procedures should also ensure that all parties to the grievance are provided adequate opportunity to present all relevant information with regard to the grievance allegation, and that such opportunities are provided in such a way to ensure due process to all parties.

The specifications which may be made with regard to grievance hearings or meetings are at the option of the education agency or institution. Specifications which may be made involve:

☐ **the minimum time to be allocated to the grievance hearing:**

Stipulation of a minimum time for the hearing can ensure that no grievance is given only *pro forma* consideration and that adequate time is allowed for the presentation of all relevant information. Such a minimum time allocation may, of course, be waived at the mutual consent of the parties to the grievance.

☐ **the time allocated to each party:**

Specific allocations of time for the presentation of the differing positions on a grievance ensure that each party is provided equal time during the meeting or hearing. Time allocations may reflect the total time alotted each party for participation in the meeting, including initial presentation of her/his grievance position, presentation of relevant evidence or witnesses, questioning of opposing witnesses, and presentation of a summary statement. It should not include any time which a party may spend in responding to questions which may be posed by any grievance authority present.

☐ **the right of each party to representation:**

Each party to a grievance is usually provided the right to be represented in whole or in part by any person of her/his choosing. It should not be necessary that these persons have legal training since grievance meetings or hearings are not usually conducted according to formal rules of evidence. Rather, the representatives should be persons selected by the respective parties because they possess knowledge and understanding of the issues involved.

Although some education agencies and institutions may have reservations regarding the admission of such representatives for participation in the grievance hearing, this participation can serve two purposes:

- Individuals not directly involved in the outcome of the grievance but with knowledge of the situation and principles involved may be able to advocate a position more clearly and efficiently than the parties directly involved.
- It can provide due process to the grievant, who in many cases faces an agency or institution represented by expert internal counsel, or who may be intimidated by the hearing procedure.

The stipulation of time allocations for the various parties can minimize the likelihood that permitting outside representation may result in a grievance hearing of excessive and unreasonable length.

☐ **the right to present witnesses and evidence:**

The presentation of relevant witnesses and evidence by all parties to the grievance may be basic to the determination of whether or not a Title IX violation has actually occurred. Without such presentations, the validity of a grievance is potentially a matter of the word of one party against that of the other. As is the case regarding the admission of representatives for participation in the meeting or hearing, the stipulation of time allocations for each party can prevent the unnecessary extension of hearing time by the introduction of redundant witnesses.

☐ **the right to question opposing witnesses:**

The right of both parties to question witnesses can facilitate the disclosure of all facts relevant to grievance consideration. It is also one element in the provision of due process to all parties to the grievance.

☐ **the moderation of the meeting or hearing:**

It is often useful if some neutral person is designated to act as moderator during the grievance meeting or hearing in order to ensure that the relevant procedural requirements are adequately and fairly implemented. This could be a function of the Title IX coordinator or a designated representative.

☐ **the right to confidential or public grievance meetings or hearings:**

If the grievant feels that the grievance is of general importance, she or he may be provided the right to open all proceedings to public observation. (The public need not be permitted active participation in the proceedings, if such an option is provided.) Such open proceedings are valuable as they provide interested persons within the agency or institution the opportunity to watch the grievance process in action and to better understand its operation and implementation. In the absence of a decision by the grievant to open

proceedings to the public, confidentiality should be maintained.

☐ **procedures for recording the hearing or meeting:** Records of the grievance hearing or meeting may provide valuable information relating to patterns of problems in Title IX compliance and to future or similar grievances, or information which can be used in the processing of the grievance at subsequent levels. Records may be made either on tape or in writing. Agencies and institutions may wish to specify minimum or maximum times for the retention of such records, which may provide important documentation in the event of a Title IX compliance investigation by the Office for Civil Rights, ED. Records could be maintained by the Title IX coordinator, as part of her/his responsibility for the coordination of Title IX grievance efforts.

Requirements for the written filing or submission of information by the grievant or the respondent:

If the filing of a formal grievance does not require a written statement of allegations, agencies and institutions may wish to specify another point in the grievance process at which the grievance should be reduced to writing. It is usually expeditious to require the filing of grievances in writing before the grievance proceeds very far along the sequence of processing steps. It may also be desirable in some procedures to require the grievance respondent (an individual alleged to be directly responsible for non-compliance or an individual with supevisory responsibility in the area related to the grievance) to make a written grievance answer as to the merit of the allegation and the facts asserted, and as to the acceptability of any redress requested. Such early submission of written grievances and answers can serve to clarify the nature of the grievance before large amounts of time are expended, and to provide reference statements of the basic issues(s) which should be under consideration at all grievance levels.

In many procedures, the parties involved in a grievance hearing are required after the hearing to summarize, in writing, their perspectives of the relevant issues and facts, and to state any redress desired. If this is to be required, it should be clearly stated in the grievance procedure.

Specification of the form which grievance decisions shall take at each level or step:

The grievance decision at any level or step should consist of at least two parts:

☐ the decision regarding the validity of the allegation that a policy, procedure, or practice of the education agency or institution is or was in violation of Title IX requirements; and, if so

☐ the specification of any actions which will be taken to correct or to redress the violation

To inform grievants of their right to such a decision, and to apprise grievance authorities of their obligation to provide such a decision, agencies and institutions may wish to include these basic specifications within the written grievance procedure.

Although it is conceivable that the form in which decisions are delivered might vary according to the form of grievance processing at each step, it is desirable that any grievance decision be made in written form, with copies provided the grievant, the respondent, and the Title IX coordinator. The requirements for written grievance decisions can facilitate grievance administration and recordkeeping, and minimize the possibility of misunderstanding by any party to the grievance. Written decisions can also provide data which may be of use in the continuing implementation of Title IX compliance efforts, by serving to clarify basic compliance issues or to indicate problem areas.

The roles and/or the selection of persons involved in the grievance proceedings other than the grievant, the respondent, and their representatives:

Many if not most grievance procedures delineate roles or functions within the processing of grievances which involve persons other than the grievant(s), the respondent(s), and their representatives. Such roles may involve a diversity of activities, including: advising or assisting potential grievants in the clarification and filing of grievances; moderating at grievance meetings or hearings; providing technical assistance to any party with regard to Title IX requirements; factfinding; participation on a hearing panel; recordkeeping; and many others.

The delineation and specification within the grievance procedure of all such roles according to the duties involved and the characteristics, qualifications, or positions of the person(s) eligible to fill these roles can avert confusion during the actual implementation of the grievance process. Delineation of the specific roles (and persons involved) is at the discretion of the education agency or institution; these roles will vary according to the nature of the grievance process. Delineation of the specific roles (and persons involved) is at the discretion of the education agency or institution; these roles will vary according to the nature of the grievance process implemented under Title IX.

(Note: The responsibility of one key staff member, the Title IX coordinator, for the coordination of investigations of complaints filed under the Title IX procedure is required by the implementing regulation. The additional roles which may be filed or functions which may be performed by this person or by her/his designees are many. These will be discussed in some detail later in this manual.)

Considerations related to the basic procedural rights of the parties to the grievance

The grievant's right of appeal:

The right of grievants to appeal grievance decisions to higher levels of decisionmaking authority is one of the most basic components of an equitable grievance procedure. It assures that all grievance decisions (except those made at the final level of appeal) are subject to review and modification, and it thus protects grievants from the bias which may occur in any single grievance decision. Grievance procedures which provide for grievance hearing at several levels of progressive authority build in an appeal mechanism.

The right of appeal should be clearly and explicitly stated within the written grievance procedure. The responsibilities of the grievant relating to the timelines, procedures, and forms for appeal should also be delineated. Many agencies and institutions may wish to ensure understanding by grievants of the right of appeal by making provision for continuing notification regarding the appeal process at the time of issuance of all grievance decisions.

The right of all parties to impartial grievance decisionmakers:

The right of all parties to a grievance decision rendered by an impartial decisionmaking authority is another basic component of an equitable grievance procedure. If a Title IX grievance procedure is to provide a mechanism by which grievants may obtain redress for illegal discrimination and by which education agencies/institutions may identify and correct inadvertent noncompliance, grievance decisions must be made by impartial authorities.

The maintenance of impartiality within an internal grievance procedure (one in which grievance decisions are made by authorized representatives of the agency or institution in which discrimination is alleged to have occurred) may be addressed in several ways within the structure of a grievance procedure:

- ☐ A grievance procedure may specify that grievances alleging noncompliance at a particular administrative level of an agency/institution are automatically referred to the next administrative level for initial processing. Such a provision is one mechanism for maximizing the impartiality of initial decisionmaking; its disadvantage is its potential sacrifice of the informality which may be desirable for the initial processing of most grievances. Further, this provision alone does not address the issue of impartiality at the final decisionmaking level.

- ☐ A grievance procedure may specify the delegation of grievance processing authority by institutional/agency administration or governance to persons or groups of persons more like to be impartial. In most such procedures, a grievance hearing panel is constituted for this purpose. In many procedures established under collective bargaining agreements, an outside arbitrator is employed to render an impartial decision at the final processing level. If a grievance procedure provides for the involvement of a hearing panel or outside arbitrator in order to ensure impartiality, it must further delineate:

  —the process and criteria for the selection of panel members or arbitrators:

  Many agencies and institutions find it desirable to delegate grievance processing authority to hearing panels representing the various constituencies within the agency/institution; students, teaching faculty, administrators, community members, etc. In some procedures, panel members are elected by their peers, in some they are selected by the parties to the grievance, and in some they are selected by the administration or governing body of the agency/institution. One type of grievance procedure requires the selection of panel members on a case-by-case basis, another requires that panel members be chosen from a standing pool of eligible persons. All such options are open to education agencies and institutions; it is important, however, that any procedure employing a hearing panel clearly specify the process by which members shall be selected and any criteria used in this process. Such criteria might include representation of particular constituencies, male-female/social-ethnic representation, lack of personal involvement in the grievance, familiarity with the subject matter of the grievance, etc.

  If an outside arbitrator is employed for grievance processing, the grievance procedure must similarly specify procedures and criteria governing her/his selection.

  —the extent of their authority for grievance decisionmaking:

  The decisionmaking authority of a grievance hearing panel or arbitrator may be full or advisory. A

delegation of full authority to a grievance hearing panel or arbitrator means that any decision rendered would constitute the final grievance decision at the level in question, with no authority for review or modification retained by agency/institutional governance or administration. A delegation of advisory authority to a panel or arbitrator is made when an institution or agency retains the right to review and modify the grievance decision. Many agencies and institutions employ a compromise regarding such authority, in which the decision of the panel/arbitrator is considered compelling and, although it is reviewed by the agency/institution, it may be rejected or modified only for compelling reasons stated in detail. Such a compromise provision may be utilized to optimize the impartiality of decisionmaking while reflecting the ultimate authority of the agency/institution in an internal procedure.

—the level of grievance processing at which they shall be utilized:

A hearing panel or arbitrator could conceivably be involved at any level of grievance processing. It is more usual, however, that panels or arbitrators are utilized at the highest processing level in order to conserve the time which is represented by a hearing panel and the financial expenditure which may be required to obtain an outside arbitrator.

Regardless of the structural provisions made to maximize the impartiality of grievance decisionmakers, such impartiality may also be facilitated by procedural provisions which require the training of all persons with decisionmaking authority. Impartiality of decisionmaking may be enhanced by training in the requirements of the Title IX regulation and related nondiscrimination precedents (on which grievance decisions should be based) and in basic principles for equitable grievance processing. Requirements for such training may be specified within the grievance procedure; such specification is one demonstration of the commitment of the agency/institution to equitable grievance processing.

The access of grievants to relevant agency/institutional records:

One of the issues which frequently arises during the implementation of grievance procedures involves the access of grievants to agency/institutional records which may be relevant to the determination of the validity of the grievance.

Several considerations are involved in this issue:

- ☐ the right of the grievant to information relevant to her/his complaint which may be in possession of the respondent agency or institution
- ☐ the responsibility of an agency or institution to protect information which is legitimatetly collected under guarantee of confidentiality
- ☐ the assumption of responsibility for any costs incurred in the reproduction of relevant records

The right of the grievant to information is of sufficient importance to the equitability of the procedure to require that some compromise between this right and the responsibility of an agency/institution for the protection of confidential information be developed. Many agencies and institutions have implemented a procedure whereby all names and all identifying information which does not bear on the validity of the grievance are removed from records provided the grievant.

The costs incurred in the reproduction of grievance-related records may range from negligible (in most individual complaints) to substantial (in class action complaints). The assumption of responsibility for such costs by the education agency or institution serves several important functions:

- ☐ It increases the likelihood that the Title IX grievance procedure does in fact provide the equitability required by the Title IX regulation. Ensuring the access of grievants to relevant information is one element in the provision of due process.
- ☐ It increases the likelihood that patterns of noncompliance with Title IX in agency or institutional policy, procedure, or practice can be identified. The identification and correction of noncompliance can protect the agency or institution from inadvertent discrimination and from the filing of complaints with the Office for Civil Rights.

One additional consideration is relevant to this point. Any grievant who is unable to obtain relevant records, either because of agency/institutional policy or a personal lack of financial resources, may simply file a Federal complaint with the Office for Civil Rights, ED. If this occurs, the agency or institution must provide all records relevant to the evaluation of the complaint and, possibly, of overall compliance with Title IX. For this reason, the assumption of record reproduction costs by an agency or institution may serve to minimize the filing of Federal complaints, and ultimately, the costs involved to the agency or institution.

Procedural stipulations with regard to such issues are, as is the structure of the Title IX grievance procedure itself, at the discretion of the recipient agency or institution.

Decisions regarding the treatment of these or any other issues within the procedure should be made in accordance with criteria for ensuring due process to all parties involved.

Protection of grievants from harassment and retaliation:

The protection of persons from harassment, reprisals, or retaliation as a result of having filed a grievance or participated in any way in the grievance process must be assured in any grievance procedure. This protection must be clearly specified within the written grievance procedure, and strongly enforced by all persons within an education agency or institution. Under many procedures, any violation of this protection may, in itself, constitute grounds for a grievance.

Confidentiality of grievance proceedings:

The confidentiality of any information related to grievances or grievance proceedings which would identify, directly or indirectly, any parties to the grievance—the person filing the grievance, and any persons named in the grievance allegation(s)—should be strictly protected. This is important for two reasons:

- ☐ It protects grievants from harassment or retaliation which might be suffered as a result of grievance filing.
- ☐ It protects persons against whom allegations of discrimination are made from damage by unsubstantiated accusations or from harassment related to identified discriminatory conduct.

Maintenance of confidentiality may also encourage openness and problem solving related to grievance resolution, when discussion and exploration may proceed in a protected situation.

Assurances of confidentiality for all parties involved in a grievance need not interfere with the availability and/or presentation of significant or precedential information to interested persons. Records may be maintained and information provided with names and any identifying information not related to the substance of the grievance expunged.

Administering A Title IX Grievance Procedure: Ensuring Its Effectiveness

In administering any Title IX grievance procedure it is important to keep in mind its two basic functions:

1) the identification of policies, procedures, and practices which do not comply with the requirements of the Title IX regulation

2) the correction of any identified instances of noncompliance and the provision of remedies or redress to any individual or group affected by such noncompliance

Even the most carefully conceptualized and constructed grievance procedure cannot fulfill these functions unless it is properly administered.

The primary administrative tasks required for the effective implementation of a procedure may be grouped within four general areas:

- ☐ training of staff responsible for grievance processing
- ☐ follow-up and monitoring of grievance resolutions
- ☐ maintenance of grievance records
- ☐ dissemination of information on the grievance procedure and its use, and on significant grievance-related developments

In some grievance procedures, responsibilities for tasks within some or all of these areas are specified within the provisions of the procedure itself; in many others, these issues are not treated. In either case, these administrative tasks are critical to the successful implementation of the Title IX grievance procedure.

Training of staff responsible for grievance processing

The equitability and effectiveness of any grievance procedure is dependent upon the skills and knowledge of those persons responsible for its implementation. Persons involved in the processing of Title IX grievances should be provided training in several areas:

- ☐ the requirements of the Title IX regulation, related memoranda, and relevant nondiscrimination precedents
- ☐ the basic principles of equitability and due process and the specific provisions and requirements of the agency/institutional grievance procedure itself
- ☐ general grievance handling skills

Such training should be provided on a continuing basis in order to ensure the involvement of all relevant staff and to provide staff with an updating on significant Title IX developments and interpretations.

Follow-up and monitoring of grievance resolutions

The fundamental purpose of a Title IX grievance procedure is to provide a fair, orderly, and systematic process for identifying, *modifying*, and *remedying* any policy, procedure, or practice or an education agency or institution which is not in compliance with Title IX requirements. The most carefully developed grievance procedure will not achieve this purpose unless consistent follow-up of grievance resolutions assures that all necessary modifications and remedial steps are taken when discrimination is identified. A variety of systems or procedures may be used for grievance follow-up and monitoring: existing management and reporting systems could be utilized or adapted, or new systems or procedures could be implemented. Regardless of the system employed, four primary functions must be performed if grievance follow-up is to be assured:

- ☐ every grievance decision must be reviewed and its implications for the modification of agency or institutional policy, procedures, or practice delineated
- ☐ every modification necessary must be broken into its component tasks, and staff responsibilities and timelines must be specified for each
- ☐ any information or assistance needed by staff to perform modification tasks must be identified and made available
- ☐ procedures for the reporting and monitoring of progress or problems in the achievement of modifications must be developed and implemented

These functions may be performed by a variety of staff members; it is advisable, however, that coordination of all follow-up and monitoring efforts be made the responsibility of the Title IX coordinator or some other individual with an understanding of the administrative and programmatic operation and structures of the agency or institution. If follow-up is to be assured, this coordinator must have

either the authority or access to the authority necessary to enforce grievance decisions.

Timelines and staff responsibilities for follow-up and monitoring activities should be clearly specified. Records of all such activities should be maintained in order to facilitate monitoring and to provide data useful for program planning.

Maintenance of grievance records

The Title IX regulation does not specify any requirements for maintenance of grievance records. It is advisable, however, to establish a comprehensive grievance recordkeeping system for the following reasons:

- ☐ It provides the basic source of information for monitoring Title IX compliance and identifying problems and follow-up activities.
- ☐ It provides a source of information to assist potential grievants in clarifying their complaints and related issues.
- ☐ It may provide important documentation of the institution's or agency's efforts in the event of a Federal compliance investigation.

There are three major considerations involved in the maintenance of grievance records:

- ☐ the contents of the records—what information should be maintained?
- ☐ public access to the records—who may use them and under what conditions?
- ☐ the time period of record maintenance—how long should each record be kept?

The contents of grievance records:

Although agencies and institutions may vary in the types and specificity of the grievance records maintained, it is desirable that records be kept of each grievance filed, including, at minimum:

- ☐ the name of the grievant; her/his position in the agency/institution
- ☐ the date of grievance filing
- ☐ the specific allegation made in the grievance and any corrective action requested by the grievant
- ☐ the names of respondents
- ☐ the levels of processing afforded the grievance, and the resolution, date, and decisionmaking authority at each level
- ☐ a summary of major points, facts, and evidence presented by each party to the grievance
- ☐ a statement of the final resolution of the grievance and the nature and date(s) of any corrective or remedial action taken

Some agencies and institutions may find it desirable to keep more extensive grievance records, including in these records copies of all written materials relevant to a particular grievance—the original grievance, any grievance answer submitted by the respondent, notes or transcripts of any grievance meeting or hearing, written grievance decisions, notification statements, etc.

The names of the grievant and respondent may be kept in confidential grievance records, but the inclusion of grievance records in the personal files of students and employees should be avoided, in order to protect grievants from recrimination and to ensure the privacy of both grievant and respondent.

Grievance records may be filed in any way most convenient for the agency or institution. It may be useful to maintain several cross-referenced sets of grievance summary files, organized according to: case number or grievant's name; school or department of the agency/institution; and nature of grievance (student: course access, athletics, counseling, etc.; employee: promotion, compensation, tenure, etc.).

Agencies and institutions will probably find it desirable to separate files of active grievances from those of grievances which have been resolved. Active grievance files should be organized in order to facilitate a quick appraisal of the current status of any grievance. Records of resolved grievances should be categorized and filed so as to facilitate the regular analysis of complaints and grievance outcomes. Analysis should provide a summary of the number of complaints, the nature of the complaints, the grievance hearing decisions, the appeal of grievances to higher levels, the actions taken as a result of grievance hearing outcomes, and the general quality of grievance handling. Not only does this provide the institution or agency with specific information on the grievance process and sex discrimination problems, but also a guide for planning future actions and programs that may be necessary to ensure Title IX compliance.

Public access to grievance records:

Decisions regarding routine public access to records of grievance proceedings should be made in consideration of two factors:

- ☐ the potential uses to be served by public access: a review of grievance records may assist potential grievants in clarifying their complaints and related issues and precedents

- ☐ the right of all persons to privacy: all parties involved in a grievance are entitled to privacy

A reasonable solution may be the maintenance of a set of grievance records with the names and any identifying characteristics of the grievant and respondent which are not integral to the substance of the grievance deleted.

The time period for record maintenance:

It is advisable that records of each grievance be kept for a period of three years, as they may be needed by agencies and institutions if an investigation of Title IX compliance is conducted by the Office for Civil Rights, ED. Such a three-year period would be the same as the period which the Title IX regulation stipulates for the maintenance of records regarding corrective and remedial actions taken to ensure Title IX compliance after completion of the required agency/institutional self-evaluation. It is also the time period required for maintenance of records pursuant to EEO5 and EEO6, the forms required for the compilation of workforce composition data by elementary/secondary and postsecondary schools, respectively.

Dissemination of information on the grievance procedure

The regulation to implement Title IX specifically requires all education agencies and institutions to publicize the existence of the grievance procedure for resolution of complaints under Title IX. Publication of a notification of the existence of the procedure is, however, not sufficient to ensure its most effective functioning. Education agencies and institutions should find compliance facilitated and time ultimately saved by the provision of more detailed information, including:

- ☐ basic information to increase student and employee understanding of Title IX and to facilitate their utilization of the Title IX grievance procedure

- ☐ information regarding grievance precedents and related modifications of institutional or agency policy, procedure, or practice

Basic information to increase student and employee understanding of Title IX and to facilitate their utilization of the Title IX grievance procedure:

The utilization of the internal Title IX grievance procedure is of benefit to an education agency or institution because it provides the opportunity for the identification of inadvertent noncompliance and for the avoidance of potential Federal complaints. The utilization of the agency's or institution's Title IX grievance procedure(s) will, in the long run, be determined by whether students and employees find it a fair procedure and one through which they can actually achieve correction of and redress for prohibited discrimination. More immediately, however, utilization of the procedure will depend upon the understanding by students and employees of their rights under Title IX and of the agency/institutional grievance procedure which is available to them for the resolution of Title IX complaints.

Information can be provided in many ways: through the development and distribution of various types of written materials; through the provision of systematic training or periodic briefings; or through a combination of these techniques. It may be targeted generally to all groups, or specific efforts may be developed for specific audiences.

In considering ways to provide information, it may be helpful to plan according to the following types of questions:

- ☐ What kind of information will be or has been provided? Information on:
  - —student rights under Title IX
  - —employee rights under Title IX
  - —employee responsibilities under Title IX
  - —agency or institutional policies or programs relating to Title IX compliance
  - —the grievance procedure(s) for resolution of Title IX complaints and how to use it

- ☐ To whom will these various kinds of information be presented (or to whom have they been presented)?
  - —students
  - —parents (of elementary/secondary school students)
  - —community members
  - —nonprofessional or classified staff
  - —professional or certificated staff or faculty
  - —administrators

☐ In what forms will these various kinds of information be presented (or in what forms have they been presented)?

—written materials

—periodic briefings

—systematic training efforts

The materials or information provided need not be lengthy; they should, rather, serve to introduce relevant information and to demonstrate the good faith and sincerity of the agency or institution relating to Title IX compliance efforts in general and the grievance procedure in particular. More detailed and specific information can always be provided through consultation with the Title IX coordinator or other designated persons. (Students and employees should, of course, be informed of this resource.)

Agencies and institutions may find it useful in planning their information program (or in evaluating the success of any previous efforts) to undertake a simple survey of students or employees to assess their information needs. Such a survey need not be complex, nor need the number of persons surveyed be large. It might be a brief survey, distributed and collected in several representative classrooms or in a staff meeting, asking simply:

☐ Do you know your rights under Title IX, the Federal law which prohibits sex discrimination in schools?

☐ Are you aware of the grievance procedure(s) which exists in this school for the filing of Title IX complaints?

☐ Do you know where or to whom you should go to discuss or file a Title IX grievance?

☐ What is your position in this school? (Please check one.)

__ student

__ teacher or faculty member

__ other professional staff

__ support or nonprofessional staff

__ administrator

Information programs could then be planned to meet the needs identified through such a survey.

Information regarding grievance precedents and related modifications of institutional or agency policy, procedure, or practice:

The analysis and dissemination of information with regard to the handling and resolution of Title IX complaints and compliance progress can serve several functions for education agencies and institutions:

☐ It can serve as one means of continuing policy notification regarding Title IX compliance. (Continuing notification of such policy is a requirement of the Title IX regulation.)

☐ It can provide administrators with a knowledge of sex discrimination and Title IX compliance problems which can serve as a resource for program administration and future action planning.

☐ It can inform students, parents, employees, and other interested persons regarding agency/institutional compliance efforts, and it may assist in the clarification of Title IX issues which, if left unclarified, might result in the filing of unnecessary grievances with an attendant drain on time and personnel resources.

It is therefore desirable that education agencies develop a program for analysis and dissemination of information related to Title IX grievances and compliance progress. Such information could be reported in the ongoing publications of the agency or institution (newsletters, staff memos, etc.), or separate vehicles could be developed for this purpose. A single publication could be developed for dissemination to all relevant groups, or separate versions might be developed to meet the particular needs of administrators, employees, and students. These publications need not be lengthy; they could contain summarized information regarding any precedential grievances filed, the principles bearing upon their resolution, and any new policies, programs, procedures or principles related to grievance resolution which should be understood. As an alternative to the preparation and dissemination of written information, periodic briefings could be conducted. Maintenance of open grievance records can also contribute to such dissemination, but some summary and analysis is needed if the information is to be useful to most persons.

To ensure effective implementation of analysis/dissemination programs, agencies and institutions should specify staff responsibilities for analysis, for information preparation, and for dissemination. Where these may be built into similar staff assignments (e.g., data analysis: the Title IX coordinator; information preparation and dissemination: the public information office staff; etc.), the resources required may be minimized.

Title IX Grievance Procedures: The Role Of The Title IX Coordinator

The role of the Title IX coordinator in the Title IX grievance procedure in particular, and in Title IX compliance efforts in general, is not specified in any detail in the Title IX regulation. The regulation requires only that at least one employee be designated to coordinate efforts to comply with and carry out the recipient agency's or institution's compliance responsibilities, including investigation of any complaints alleging actions prohibited by the regulation. The regulation further stipulates that the recipient must notify all students and employees of the name, office address, and telephone number of the employee(s) designated as Title IX coordinator(s).

The specific duties of any Title IX coordinator will, of course, vary according to the particular characteristics of her/his education agency or institution and of the grievance procedure it implements. In many agencies and institutions, however, the Title IX coordinator will be the person with major responsibility for Title IX compliance efforts. Although ultimate responsibility for compliance remains with the chief administrative officer of an agency or institution, and actual compliance implementation responsibilities potentially adhere to all staff members, the Title IX coordinator's responsibility for coordination of compliance programs and activities is critical to the development, implementation, and monitoring of meaningful efforts.

In order to delineate the functions of the Title IX coordinator and to ensure adequate agency/institutional support for her/his effective functioning, it may be useful for education agencies and institutions to consider:

- ☐ the tasks and responsibilities relating to the implementation and administration of the grievance process
- ☐ the competencies and skills necessary for the effective administration of the grievance process and related compliance activities
- ☐ basic principles regarding the effective functioning of the Title IX coordinator within the organizational structure of the agency/institution

Tasks and responsibilities relating to the implementation and administration of the grievance process

The tasks and responsibilities relating to the implementation and administration of the Title IX grievance procedure provide one useful first reference point for the delineation of the functions of the Title IX coordinator. Although the specific tasks involved will vary from procedure to procedure, virtually any grievance procedure requires numerous and diverse tasks for its actual implementation. Specification of these tasks suggests the potential dimensions of the coordination function involved in grievance processing.

Examination of a prototypical grievance procedure in terms of its various phases or components—grievance initiation, grievance processing, and administration of the grievance procedure—suggests the types of tasks to be performed in most agencies and institutions. Some of these tasks are listed below. These lists include only those tasks involved in day-to-day implementation and administration of a grievance procedure; the many tasks related to the development and initial installation of a procedure (as summarized in preceding sections) are not included.

Grievance initiation:

- ☐ provision of consultation and information regarding Title IX requirements to potential grievants
- ☐ distribution of grievance forms to potential grievants
- ☐ participation in pregrievance meetings to assist in informal factfinding and mediation
- ☐ provision of assistance to potential grievants in formal grievance filing
- ☐ receipt of formal grievances

Grievance processing:

- ☐ notification of respondents regarding grievances filed; request and receipt of grievance answers when required
- ☐ determination of appropriate level for first processing of each grievance
- ☐ scheduling of all grievance hearings
- ☐ notification of parties regarding scheduling of grievance hearings
- ☐ moderation of grievance hearings
- ☐ recording of grievance hearings
- ☐ notification of all parties regarding grievance decisions

- ☐ notification of grievants regarding the right and procedures of appeal
- ☐ receipt and referral of grievance appeals
- ☐ selection of hearing panel members (or outside arbitrator when employed)
- ☐ provision of relevant records to grievants, respondents, and hearing officers
- ☐ maintenance of consultation services regarding sources of information and assistance to both grievants and respondents
- ☐ provision of consultation to hearing officers
- ☐ monitoring of compliance with all requirements and timelines specified in the grievance procedure

Administration of the grievance procedure and related compliance activities:

- ☐ training of staff responsible for grievance processing
- ☐ review of grievance decisions for implications regarding necessary modification of agency/institutional policy, procedure, or practice
- ☐ delineation of all modification tasks, timelines, and staff responsibilities
- ☐ provision of technical assistance to staff as necessary to achieve modifications
- ☐ monitoring and reporting of the implementation of modifications taken under grievance decisions
- ☐ maintenance of grievance and compliance records and files
- ☐ conduct of periodic compliance assessments or reviews
- ☐ preparation and/or dissemination of information regarding
  - —Title IX requirements and student and employee rights
  - —the availability and use of the Title IX grievance procedure
- ☐ analysis and reporting of Title IX grievance precedents and compliance activities
- ☐ provision of ongoing training, consultation, technical assistance, and information services regarding Title IX requirements, grievance issues, and compliance programs

Beyond the general regulatory requirement that the Title IX coordinator be responsible for the coordination of these and/or similar activities involved in the investigation of complaints of discrimination, these tasks may be assigned in a variety of ways. In some education agencies and institutions, the Title IX coordinator may be personally responsible for a large number of these tasks. This may be desirable or possible if an agency or institution is small, if it is relatively centralized in its administrative structure and organization, and/or if one or several staff members have full-time responsibility for Title IX coordination. In other agencies and institutions, it may be desirable to delegate many of these tasks among a number of staff members. This is likely to be necessary in large, administratively complex agencies and institutions, and those in which the Title IX coordinator has a variety of other responsibilities. Regardless of the degree of centralization/decentralization in the assignment of these tasks, it is advisable that:

- ☐ ultimate responsibility for their supervision and monitoring remain with the Title IX coordinator, and procedures and forms be developed as necessary to ensure reporting to, and recordkeeping by the Title IX coordinator
- ☐ all employees be made accountable for assisting and cooperating with the Title IX coordinator for other responsible staff in the implementation and administration of the grievance process and Title IX compliance efforts

Competencies and skills necessary for the administration of the grievance process and related compliance activities

In order to perform the many tasks involved in the implementation and administration of the Title IX grievance process and related compliance activities, it is necessary that the Title IX coordinator(s) possess or acquire a variety of competencies and skills. These may be organized within three primary groups:

- ☐ Title IX-related competencies
- ☐ administrative competencies
- ☐ interpersonal competencies

Title IX-related competencies:

In many education agencies and institutions, the Title IX coordinator(s) is the primary person(s) relied upon for technical information regarding Title IX, its implementing regulation, and related administrative or judicial rulings.

Competencies in this area are largely *knowledge* competencies. They include:

- ☐ in-depth knowledge of the Title IX regulation, interpretive memoranda issued by the Federal government, and continuing judicial decisions
- ☐ general knowledge of other Federal and State nondiscrimination laws and related judicial precedents as they bear upon the interpretation of Title IX requirements
- ☐ knowledge of the internal agency/institutional Title IX grievance procedure, including:
  - —the rationale for its various structural or administrative characteristics
  - —significant grievance decisions or precedents as they emerge
- ☐ knowledge of sources of information for continued updating on Title IX and related resources (materials, persons, and organizations), activities, and events

Administrative competencies:

The Title IX coordinator must, in addition to understanding the technical requirements of Title IX, have the ability to transfer these requirements and related grievance resolutions into the actual program of the education agency/institution. In order to accomplish this she/he must possess considerable *administrative* knowledge and skills:

- ☐ thorough knowledge of, and experience in, the decision-making structure and operations of the agency/institution
- ☐ knowledge of the personnel policies and practices of the agency/institution
- ☐ knowledge of the student programs and related policies and practices of the agency/institution
- ☐ ability to design, implement, and monitor compliance activities:
  - —to obtain and analyze data relevant to Title IX compliance
  - —to delineate compliance goals and objectives
  - —to establish compliance timelines
  - —to allocate staff assignments
  - —to develop and implement monitoring and reporting procedures
  - —to develop and implement recordkeeping procedures or systems
- ☐ ability to prepare reports on Title IX compliance activities and make recommendations for action by appropriate decisionmakers

Interpersonal competencies:

Successful implementation of the Title IX grievance procedure and related compliance activities requires the understanding, cooperation, and action of all students and employees of an education agency/institution. The Title IX coordinator must demonstrate interpersonal communications skills or competencies in order to obtain the constructive involvement of a variety of persons in the grievance process and compliance activities. Some of these skills or competencies are:

- ☐ ability to interpret and personalize technical Title IX information for use by employees and students
- ☐ ability to design and implement relevant
  - —training activities
  - —consultation services
  - —continuing information services
- ☐ ability to communicate effectively both orally and in writing with a variety of constituencies
- ☐ ability to diagnose, clarify, and mediate differences of opinion
- ☐ ability to maintain nonjudgmental and nonthreatening behaviors in situations of conflict
- ☐ ability to state a position clearly and assertively in situations of opposition
- ☐ ability to establish a positive climate for Title IX compliance efforts

If the success of the Title IX grievance procedure and compliance efforts is to be optimized, it is desirable that the Title IX coordinator possess as many of these competencies as possible. Although certain activities might be effectively delegated to other staff (e.g., the actual implementation of compliance surveys, the implementation of recordkeeping procedures, the preparation of written information on the Title IX requirements or grievance precedents, etc.) it is crucial that the Title IX coordinator possess the authority and competencies necessary to coordinate and monitor the many activities basic to Title IX compliance.

Basic principles regarding the effective functioning of the Title IX coordinator within the organizational structure of the agency/institution

Any consideration of the role and functioning of the Title IX coordinator must consider at least two basic principles

regarding the effective functioning of the coordinator within the organizational structure of an education agency or institution. Regardless of the particular structure involved, the Title IX coordinator cannot be optimally effective unless:

- ☐ the functions and responsibilities of the Title IX coordinator are clearly delineated and communicated to all levels of agency/institutional governance and administration and to all employees and students
- ☐ the Title IX coordinator is provided all information and all authority or access to authority necessary to enforce compliance requirements and mandate compliance programs and activities

Delineation and communication of the functions and responsibilities of the Title IX coordinator:

One of the difficult aspects of the role of the Title IX coordinator is the possible contradiction which may be involved in advocating any changes necessary to ensure compliance with Title IX requirements while serving as an employee of an institution or agency which may tend to maintain the status quo. Although this need not be problematic, difficulties may occur if the coordinator's role, functions, and responsibilities are not adequately defined and communicated, fully supported by middle and top management, and understood by employees and students. Too often difficulties experienced in Title IX compliance efforts are considered to be indications of some personal inadequacy on the part of involved individuals. Many of these difficulties may rather be a result of a lack of clarity and understanding regarding compliance requirements and the role of the Title IX coordinator within the agency/institution.

All administrators, staff, and students should be made aware that the overall role and responsibilities of the Title IX coordinator are established by Federal regulation, and that the ultimate critera which guide agency/institutional compliance efforts are those specified by the same regulation. Further, it should be understood that if the coordinator is to coordinate agency/institutional compliance efforts effectively as the Title IX regulation requires, her/his responsibilities must include preventive as well as corrective or remedial activities. Corrective and remedial activities involve those which might be undertaken to correct noncompliance identified through the grievance process or during the required agency/institutional self-evaluation (e.g., the modification of sex differentiation in a salary schedule) and to remedy its effects (e.g., the awarding of back pay to employees who suffered from the discriminatory schedule). Preventive activities involve those such as the periodic assessment of the awareness of employees and students regarding Title IX requirements, or the provision of training and updating services to staff regarding their compliance responsibilities.

Agencies and institutions must ensure that communications regarding the role and functions of the Title IX coordinator are made to all students and personnel.

The Title IX coordinator's access to information and authority:

Effective implementation of the role of the Title IX coordinator may only occur when the coordinator has open access to information and to administrative and decision-making authority in all areas covered by the Title IX regulation. The coordinator must have the power to obtain information relevant to the determination and monitoring of compliance, and to effectuate and enforce necessary compliance actions in any relevant aspect of agency/institutional policy, procedure, or practice.

Because Title IX compliance is ultimately the responsibility of the agency's/institution's chief administrative officer, it is advisable that the Title IX coordinator report directly to this officer, or to an individual at the highest level of management who has direct and immediate access to the chief administrative officer.

Underlying each of these principles is the responsibility of education agencies and institutions to ensure that all possible support is provided for the functioning of the Title IX coordinator. An effective Title IX coordinator can assist agencies and institutions in interpreting and complying with their legal obligations for nondiscrimination (obligations which must be met if eligibility for Federal financial assistance is to be maintained) and in fulfilling their educational responsibility to provide equal educational opportunity to all students.

Appendix A

A Sample Title IX Grievance Procedure

Overview Flow Chart

Flow Charts: Detailed Sequences of Activities

—Initiation of Grievances

—Level I

—Level II

—Level III

A Sample Grievance Procedure for Title IX of the Education Amendments of 1972: Procedure and Comments

A Sample Title IX Grievance Procedure

The following is a sample of a Title IX grievance procedure which might be used by a local education agency or an institution of postsecondary education for the processing of both student and employee complaints of sex discrimination. It provides for the processing of a grievance at three levels of progressive decisionmaking. At Level I, a grievance is heard by an authority at the level most immediate to many grievance occurrences—an individual school within a local education agency, a school or department within a postsecondary institution, etc. Level II decisionmaking is at the central administrative level of the agency or institution. Level III calls for final grievance resolution by the governing body of the agency or institution—the board of education or the board of trustees. The procedure also includes the alternative use of a hearing panel representing various groups within an agency or institution—students, teachers/faculty, administrators, etc.—at Level III.

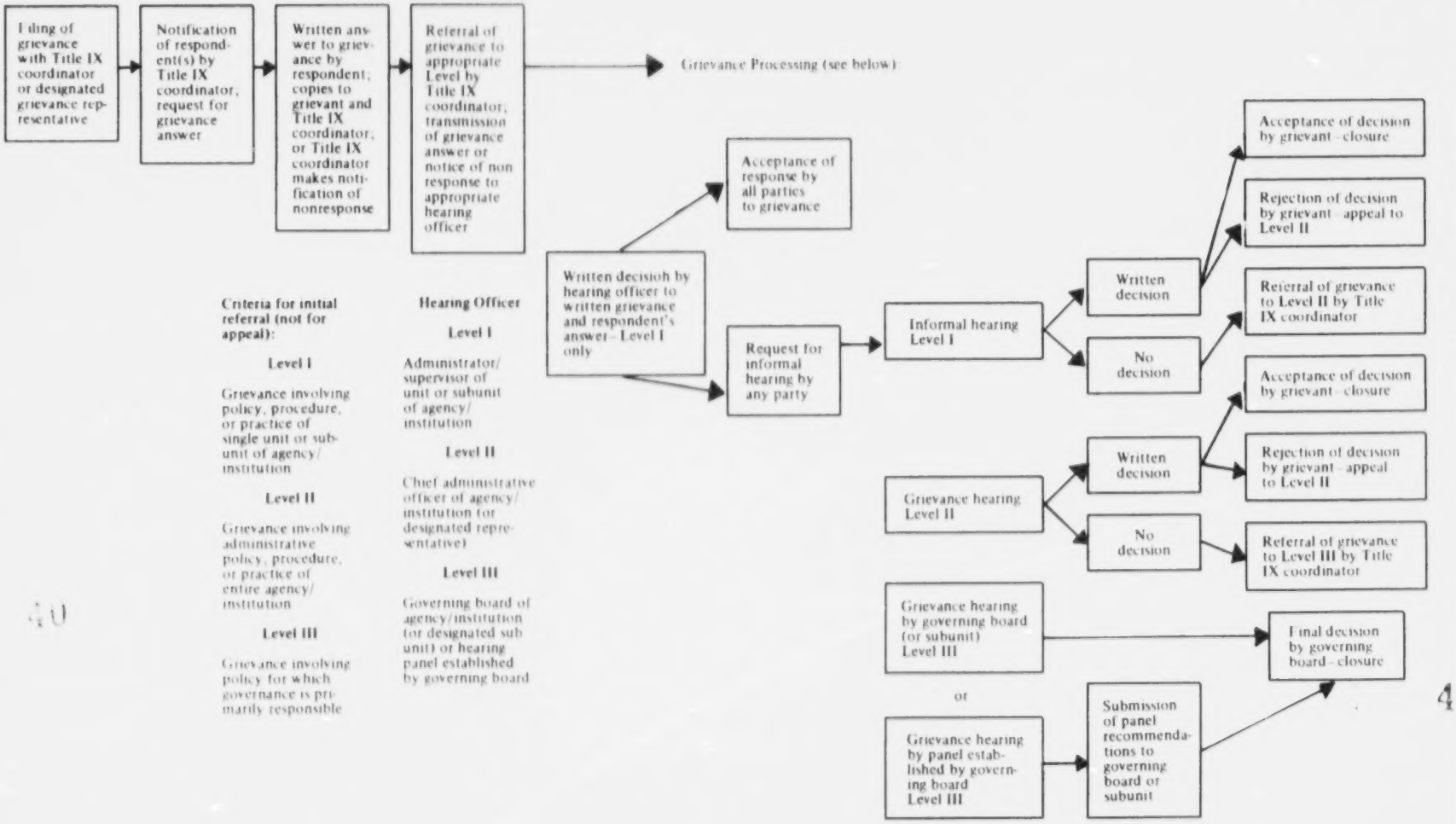
It may be useful to examine the procedure at three levels of specificity:

- ☐ First, an "overview flow chart" provides a visual representation of the levels for grievance processing and the major steps within the processing sequence.
- ☐ Second, four charts specify a detailed sequence and timeline of grievance activities and tasks, and the persons involved in each, for the major phases of the grievance process: grievance initiation, Level I, Level II, and Level III.
- ☐ Third, the sample grievance procedure itself is presented. The actual clauses are written in formal grievance language, and comments are provided in nontechnical style to interpret the significance or rationale of particular clauses.

The sample procedure may be used in a variety of ways. Provisions of the sample procedure are designed to specify a process in detail. Some agencies or institutions may wish to adopt this or a similar procedure. Others may wish to adapt or simplify the procedure or to incorporate selected provisions or clauses into their existing grievance procedures. Still others may wish to use the procedure as a general base for comparison and review of their own procedures. It should be remembered that the Title IX regulation does *not* specify the procedure to be used; this example is provided only to illustrate a possible grievance procedure and to suggest one basis for the evaluation of other Title IX procedures.

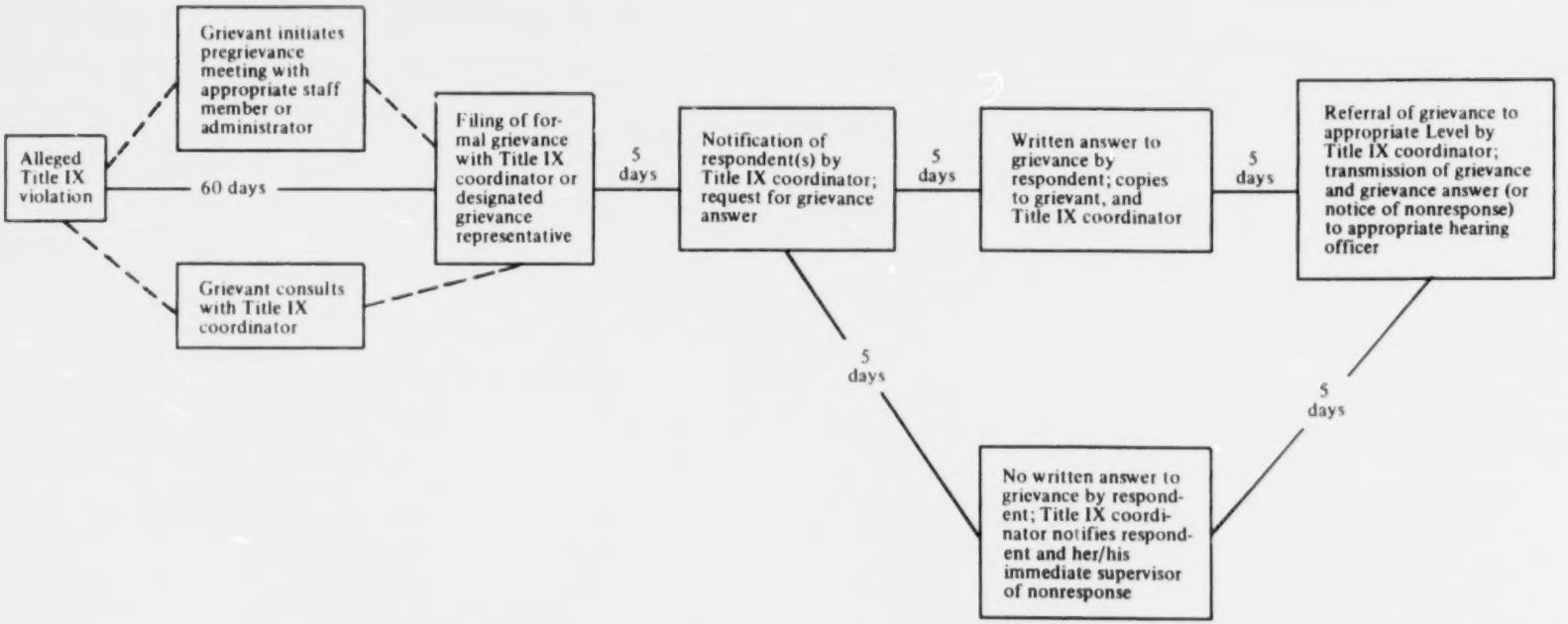
SAMPLE TITLE IX GRIEVANCE PROCEDURE:

OVERVIEW FLOW CHART


Filing of grievance with Title IX coordinator or designated grievance representative
Notification of respondent(s) by Title IX coordinator; request for grievance answer
Written answer to grievance by respondent; copies to grievant and Title IX coordinator; or Title IX coordinator makes notification of nonresponse
Referral of grievance to appropriate Level by Title IX coordinator; transmission of grievance answer or notice of non response to appropriate hearing officer
Grievance Processing (see below)
Written decision by hearing officer to written grievance and respondent's answer – Level I only
Acceptance of response by all parties to grievance
Request for informal hearing by any party
Informal hearing Level I
Written decision
No decision
Acceptance of decision by grievant – closure
Rejection of decision by grievant – appeal to Level II
Referral of grievance to Level II by Title IX coordinator
Grievance hearing Level II
Written decision
No decision
Acceptance of decision by grievant – closure
Rejection of decision by grievant – appeal to Level II
Referral of grievance to Level III by Title IX coordinator
Grievance hearing by governing board (or subunit) Level III
or
Grievance hearing by panel established by governing board Level III
Submission of panel recommendations to governing board or subunit
Final decision by governing board – closure
Criteria for initial referral (not for appeal):
Level I
Grievance involving policy, procedure, or practice of single unit or subunit of agency/institution
Level II
Grievance involving administrative policy, procedure, or practice of entire agency/institution
Level III
Grievance involving policy for which governance is primarily responsible
Hearing Officer
Level I
Administrator/supervisor of unit or subunit of agency/institution
Level II
Chief administrative officer of agency/institution (or designated representative)
Level III
Governing board of agency/institution (or designated sub unit) or hearing panel established by governing board

SAMPLE TITLE IX GRIEVANCE PROCEDURE:

DETAILED SEQUENCE OF ACTIVITIES: INITIATION OF GRIEVANCE PROCESSING

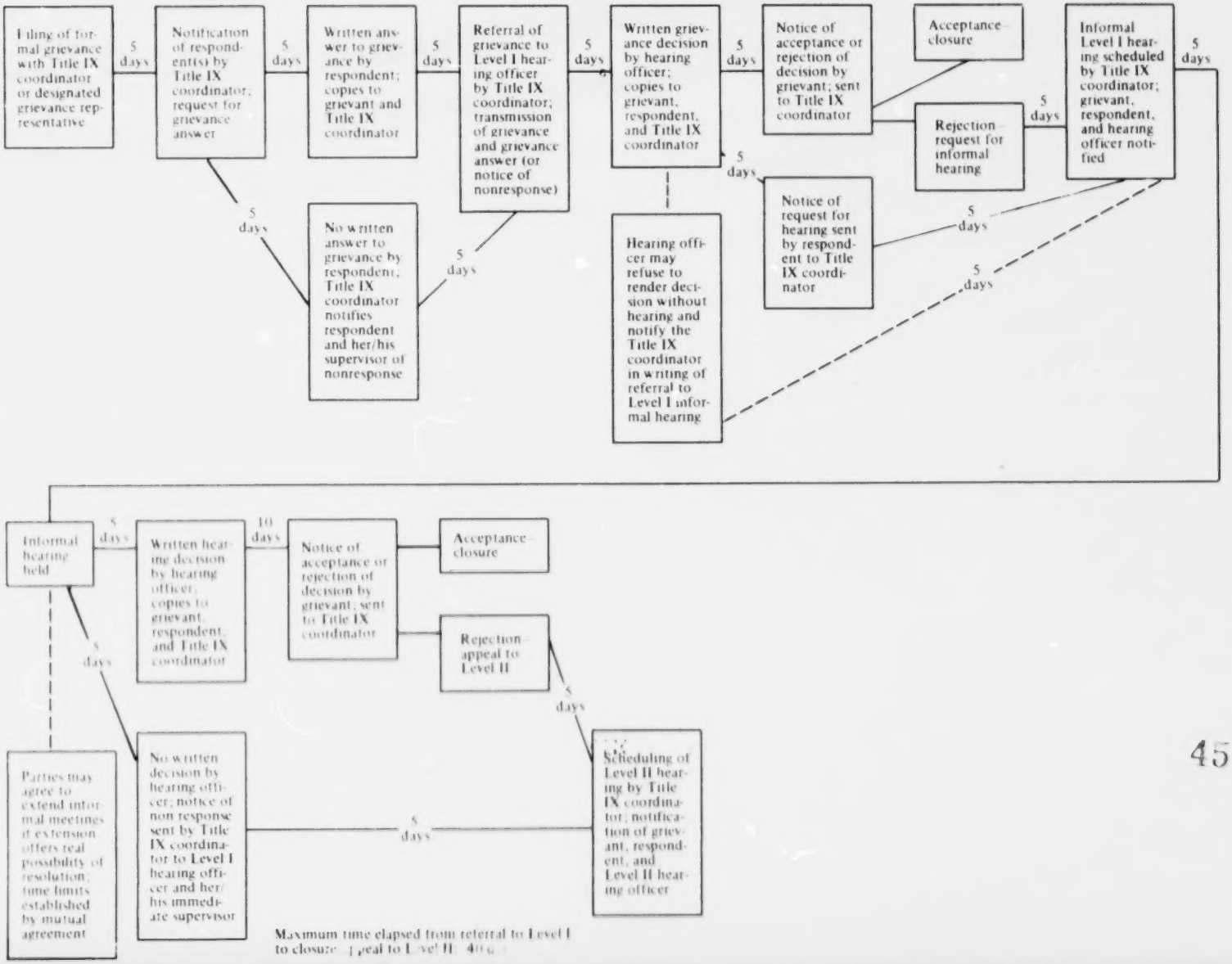

Alleged Title IX violation
Grievant initiates pregrievance meeting with appropriate staff member or administrator
60 days
Grievant consults with Title IX coordinator
Filing of formal grievance with Title IX coordinator or designated grievance representative
5 days
Notification of respondent(s) by Title IX coordinator; request for grievance answer
5 days
Written answer to grievance by respondent; copies to grievant, and Title IX coordinator
5 days
Referral of grievance to appropriate Level by Title IX coordinator; transmission of grievance and grievance answer (or notice of nonresponse) to appropriate hearing officer
5 days
No written answer to grievance by respondent; Title IX coordinator notifies respondent and her/his immediate supervisor of nonresponse
5 days

Maximum time elapsed between alleged Title IX violation and filing of formal grievance: 60 days

Maximum time elapsed from grievance filing to referral to appropriate Level for initial processing: 15 days

SAMPLE TITLE IX GRIEVANCE PROCEDURE

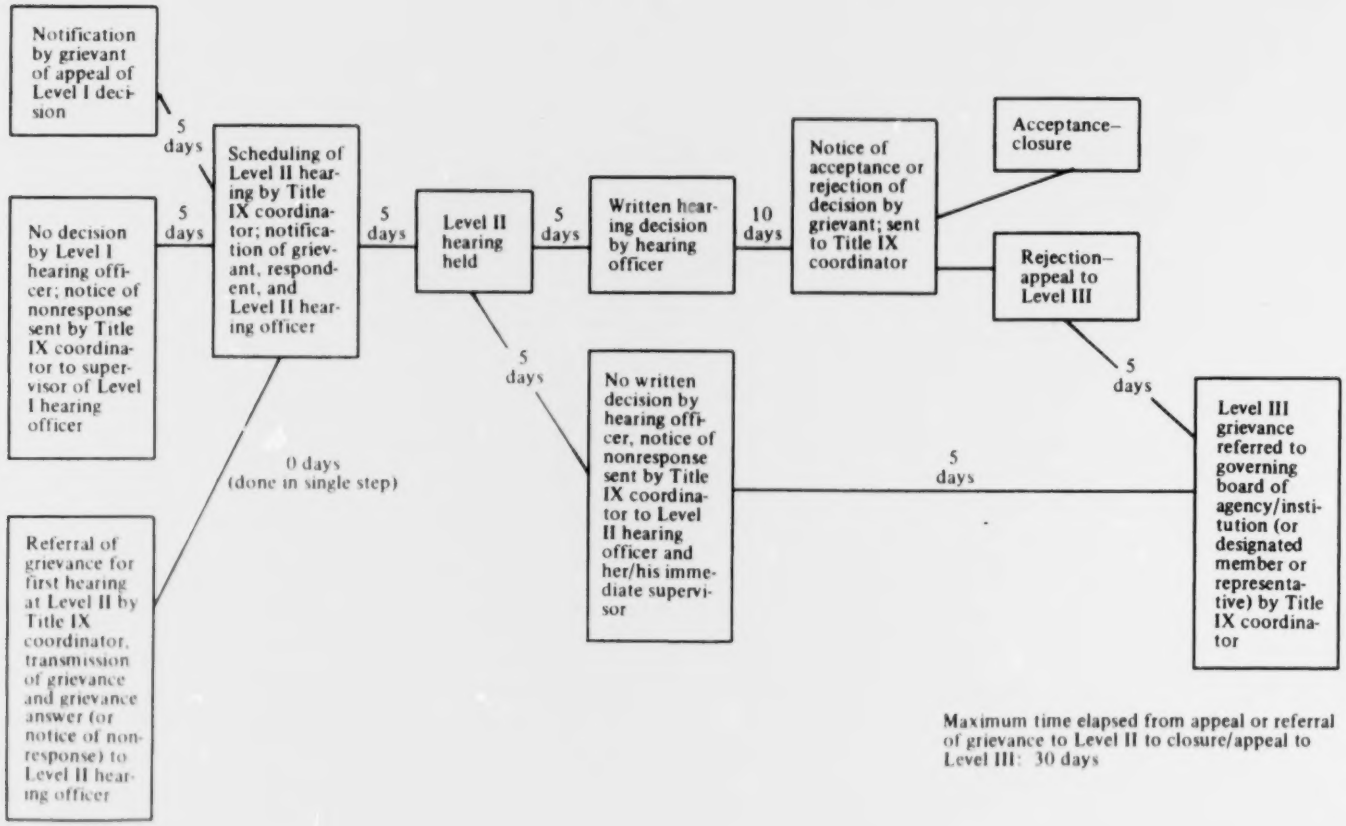
DETAILED SEQUENCE OF ACTIVITIES–LEVEL I


Filing of formal grievance with Title IX coordinator or designated grievance representative
5 days
Notification of respondent(s) by Title IX coordinator; request for grievance answer
5 days
Written answer to grievance by respondent; copies to grievant and Title IX coordinator
5 days
Referral of grievance to Level I hearing officer by Title IX coordinator; transmission of grievance and grievance answer (or notice of nonresponse)
5 days
Written grievance decision by hearing officer; copies to grievant, respondent, and Title IX coordinator
5 days
Notice of acceptance or rejection of decision by grievant; sent to Title IX coordinator
Acceptance–closure
Rejection–request for informal hearing
5 days
Informal Level I hearing scheduled by Title IX coordinator; grievant, respondent, and hearing officer notified
5 days
5 days
No written answer to grievance by respondent; Title IX coordinator notifies respondent and her/his supervisor of nonresponse
5 days
5 days
Notice of request for hearing sent by respondent to Title IX coordinator
5 days
Hearing officer may refuse to render decision without hearing and notify the Title IX coordinator in writing of referral to Level I informal hearing
5 days
Informal hearing held
5 days
Written hearing decision by hearing officer; copies to grievant, respondent, and Title IX coordinator
10 days
Notice of acceptance or rejection of decision by grievant; sent to Title IX coordinator
Acceptance–closure
Rejection–appeal to Level II
5 days
5 days
Parties may agree to extend informal meetings if extension offers real possibility of resolution; time limits established by mutual agreement
No written decision by hearing officer; notice of non response sent by Title IX coordinator to Level I hearing officer and her/his immediate supervisor
5 days
Scheduling of Level II hearing by Title IX coordinator; notification of grievant, respondent, and Level II hearing officer

Maximum time elapsed from referral to Level I to closure or appeal to Level II: 40 days

SAMPLE TITLE IX GRIEVANCE PROCEDURE

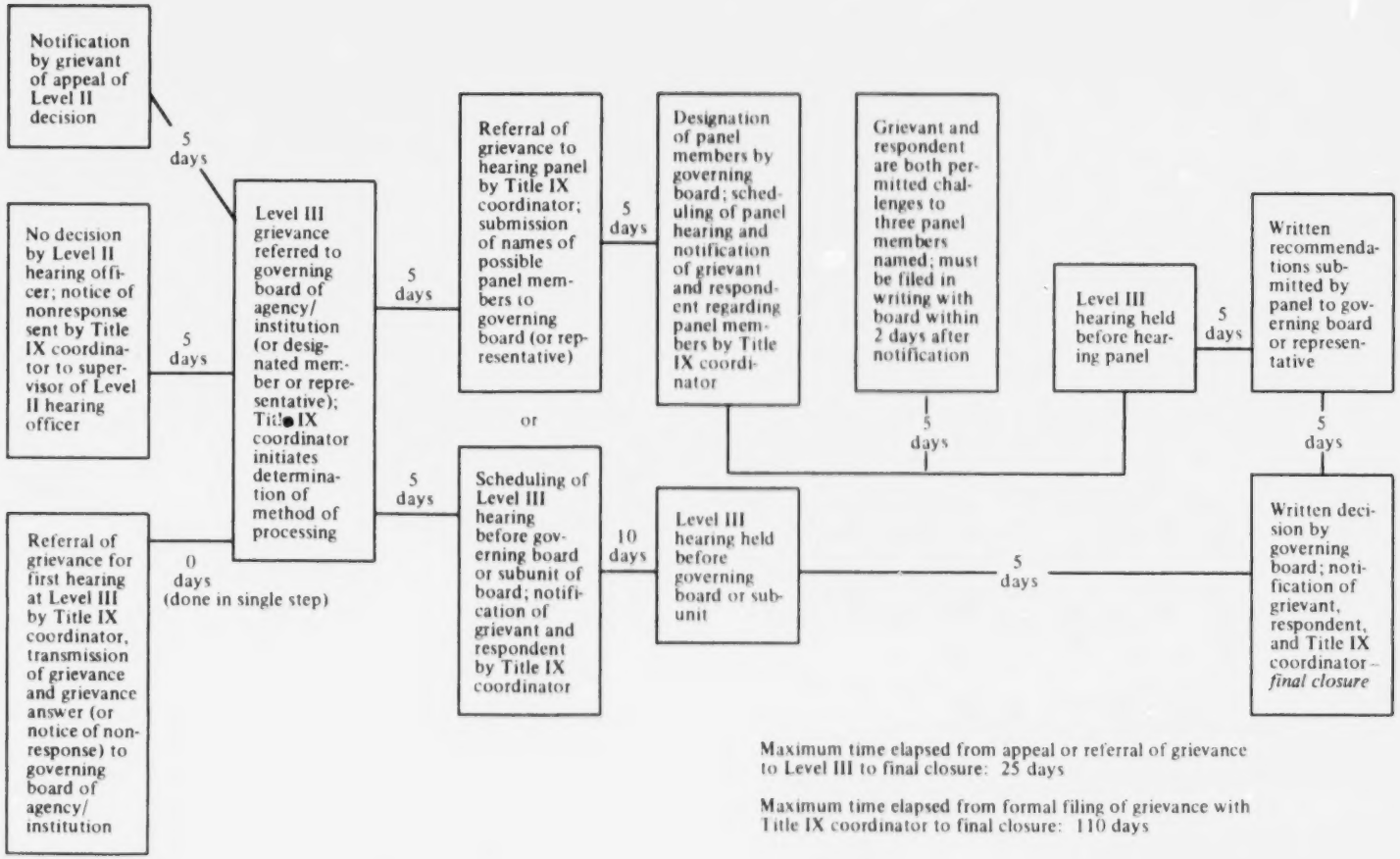
DETAILED SEQUENCE OF ACTIVITIES–LEVEL II


Notification by grievant of appeal of Level I decision
5 days
No decision by Level I hearing officer; notice of nonresponse sent by Title IX coordinator to supervisor of Level I hearing officer
5 days
Referral of grievance for first hearing at Level II by Title IX coordinator, transmission of grievance and grievance answer (or notice of nonresponse) to Level II hearing officer
0 days (done in single step)
Scheduling of Level II hearing by Title IX coordinator; notification of grievant, respondent, and Level II hearing officer
5 days
Level II hearing held
5 days
Written hearing decision by hearing officer
10 days
Notice of acceptance or rejection of decision by grievant; sent to Title IX coordinator
Acceptance–closure
Rejection–appeal to Level III
5 days
Level III grievance referred to governing board of agency/institution (or designated member or representative) by Title IX coordinator
5 days
No written decision by hearing officer, notice of nonresponse sent by Title IX coordinator to Level II hearing officer and her/his immediate supervisor
5 days

Maximum time elapsed from appeal or referral of grievance to Level II to closure/appeal to Level III: 30 days

SAMPLE TITLE IX GRIEVANCE PROCEDURE:

DETAILED SEQUENCE OF ACTIVITIES–LEVEL III


Notification by grievant of appeal of Level II decision
5 days
No decision by Level II hearing officer; notice of nonresponse sent by Title IX coordinator to supervisor of Level II hearing officer
5 days
Referral of grievance for first hearing at Level III by Title IX coordinator, transmission of grievance and grievance answer (or notice of nonresponse) to governing board of agency/ institution
0 days (done in single step)
Level III grievance referred to governing board of agency/ institution (or designated member or representative); Title IX coordinator initiates determination of method of processing
5 days
Referral of grievance to hearing panel by Title IX coordinator; submission of names of possible panel members to governing board (or representative)
5 days
Designation of panel members by governing board; scheduling of panel hearing and notification of grievant and respondent regarding panel members by Title IX coordinator
Grievant and respondent are both permitted challenges to three panel members named; must be filed in writing with board within 2 days after notification
5 days
or
5 days
Scheduling of Level III hearing before governing board or subunit of board; notification of grievant and respondent by Title IX coordinator
10 days
Level III hearing held before governing board or subunit
5 days
Level III hearing held before hearing panel
5 days
Written recommendations submitted by panel to governing board or representative
5 days
Written decision by governing board; notification of grievant, respondent, and Title IX coordinator – final closure

Maximum time elapsed from appeal or referral of grievance to Level III to final closure: 25 days

Maximum time elapsed from formal filing of grievance with Title IX coordinator to final closure: 110 days

A Sample Grievance Procedure for Title IX of the Education Amendments of 1972: Procedure and Comments

Procedure

Comments

I. Definitions

A. Grievance: Grievance means a complaint alleging any action, policy, procedure, or practice which would be prohibited by Title IX.

B. Title IX: Title IX means Title IX of the Education Amendments of 1972, the 1980 implementing regulation, and any memoranda, directives, guidelines, or subsequent legislation that may be issued or enacted.

C. Grievant: Grievant means a student or employee of *(name of institution/agency)* who submits a grievance relevant to Title IX or an individual or group submitting a grievance in behalf of a student(s) or employee(s).

C. This procedure permits grievance filing by persons acting on behalf of a student or employee. Although this is not required in internal procedures, it parallels Federal complaint procedures.

D. (Name of institution/agency): Any reference to *(name of institution/agency)* means any school, department, subunit or program operated by *(name of institution/agency)*.

D. (Name of agency/institution) is a recipient of Federal funds. The term "recipient" as used in the Title IX regulation refers to the entirety of a state or local education agency, or of an institution of postsecondary education and to all programs it operates; it does not refer only to those portions or programs of the agency or institution receiving direct Federal funding.

E. Title IX Coordinator: Title IX coordinator means the employee(s) designated to coordinate *(name of institution/agency)* efforts to comply with and carry out its responsibilities under Title IX and the Title IX implementing regulation.

F. Title IX Grievance Representative: Title IX grievance representative means any person designated by *(name of institution/agency)* or by the Title IX coordinator as a person with whom Title IX grievances may be filed. The Title IX grievance representative may be delegated other tasks by the Title IX coordinator.

G. Respondent: Respondent means a person alleged to be responsible, or who may be responsible for the

Title IX violation alleged in a grievance. The term may be used to designate persons with direct responsibility for a particular action or those persons with supervisory responsibility for procedures and policies in those areas covered in the grievance.

H. **Hearing Officer:** Hearing officer means the representative(s) of *(name of institution/agency)* or of its governing body who is delegated authority for hearing/resolving a grievance at a specified level of grievance processing.

I. **Grievance Answer:** Grievance answer means the written statement of the respondent regarding the grievance allegation and possible corrective action.

J. **Grievance Decision:** Grievance decision means the written statement of a hearing officer of her/his findings regarding the validity of the grievance allegation and the corrective action to be taken.

K. **Day:** Day means a working day; the calculation of days in grievance processing shall exclude Saturdays, Sundays, and holidays.

L. **Corrective Action:** Corrective action means action which is taken by *(name of institution/agency)* to eliminate or modify any policy, procedure, or practice found to be in violation of Title IX and/or to provide redress to any grievant injured by the identified violation.

II. Filing of Grievances

A. **Eligibility for Filing:** Any student or employee, or any individual or group acting in behalf of a student or employee may file any grievance with the Title IX coordinator or other designated Title IX grievance representative(s).

B. **Pregrievance Meetings:** Prior to the filing of a written grievance, the grievant(s) may request a pregrievance meeting with the respondent alleged to be directly responsible for the Title IX violation and/or persons with immediate supervisory authority related to the grievance. These persons shall make reasonable efforts to meet with any student/or employee to discuss Title IX matters that the students or employees may wish to bring to their attention. Such a pregrievance meeting shall be at the option of the grievant(s); it shall not be a precondition for the submission of a written grievance.

A. Designation of Title IX grievance representatives in individual buildings, departments, or schools within the agency/institution increases the ease of grievance filing. A list of Title IX grievance representatives with whom grievances may be filed should be included in the notification of the grievance procedure sent to all students and employees.

B. If the grievant(s) wishes further information or clarification of policies or practices before filing a grievance, she/he may request an informal meeting to discuss Title IX matters with appropriate personnel. This provision simply guarantees informal student and employee access to responsible administrators prior to filing of a grievance. Provision of the opportunity for open discussion before filing a grievance provides both grievants and respondents with the opportunity to discuss Title IX related matters in a problem-solving situation outside of what may be experienced as the adversary climate of the grievance process. Ensuring such pregrievance access to key administrators may reduce the numbers of grievances filed and the subsequent time expended in grievance handling. Students and employees are not required to request these meetings prior to filing grievance, however.

C. **Grievance Filing:** Grievances filed with the Title IX coordinator or designated Title IX grievance representative shall be in writing and provide the following information: name and address of grievant(s); nature and date of alleged violation; names of persons responsible for the alleged violation (where known); requested relief or corrective action (specification of desired relief shall be the option of the grievant); and any background information the grievant believes to be relevant (e.g., names of other persons affected by the violation, etc.).

C. Filing of a grievance in writing can save considerable time since it eliminates the need for grievants to repeat their story to several different individuals and it facilitates the identification of respondents. Written grievance documents ensure that all individuals involved in the grievance process receive the same information and do not have to rely on memory or hearsay to reconstruct the complaint. Providing the grievant with the opportunity to specify the desired relief may expedite the grievance handling.

D. **Grievance Forms:** A grievance form shall be prepared by the Title IX coordinator to facilitate the filing of the grievance. These forms may be obtained from the Title IX coordinator or from any designated Title IX grievance representative. The grievant shall have the right to request assistance from the Title IX coordinator's office, or any other individual, group, or organization, to assist in the preparation of the form or in the filing of the grievance.

D. Provision should be made to provide assistance to any persons who may have difficulty in preparing the grievance in written form.

E. **Time Limit for Grievance Filing:** A grievance must be filed within 60 days of the occurrence of the alleged Title IX violation.

E. The establishment of a time limit encourages the grievant to file at a time when information bearing on the validity of the grievance is likely to be available and protects the institution/agency from charges of past violations which may be difficult to investigate.

III. Initial Processing of Grievances

A. **Notification of Respondents:** Within five days of the filing of a grievance, the Title IX coordinator or designated Title IX grievance representative shall notify the respondent(s) of the grievance and of her/his responsibility for submission of a written grievance answer within five days after receipt of the grievance notification.

A. Respondents to be notified would be the person or persons directly involved or alleged to be involved in the alleged Title IX violation, or the person with supervisory responsibility for the activity or area being considered in grievance.

In some grievances in which the grievant does not identify a respondent alleged to be directly involved in a Title IX violation, it may be difficult to identify the appropriate respondents. When this happens, the highest ranking decision maker at the level of consideration (building/school/department; agency/institutional administration; agency/institutional governance) should be notified. (The grievance process should proceed even if all respondents cannot be identified; otherwise, the notification process could become a means of grievance obstruction.)

In many instances, the respondent and the hearing officer may thus be the same person (e.g., the

principal of a school within a local education agency might be both the respondent and the Level I hearing officer in a grievance involving a policy of that school; the board of trustees of a university would be both the respondents and the Level III hearing officer(s) in a grievance involving a university-wide policy established by that board). This circumstance is inherent in many internal grievance procedures (all those which do not mandate binding grievance decisionmaking by a neutral third party); it requires the good faith efforts of the respondent/hearing officer for the objective evaluation of grievances according to Title IX criteria.

B. Respondent's Grievance Answer: The respondent(s) receiving a copy of a grievance shall, within five days, submit a written grievance answer to the grievant and the Title IX coordinator. Such answer shall 1) confirm or deny each fact alleged in the grievance; 2) indicate the extent to which the grievance has merit; and 3) indicate acceptance or rejection of any desired redress specified by the grievant, or outline an alternative proposal for redress.

B. The requirement for a written answer to the grievance by the respondent(s) services to ensure that the respondent has familiarized herself/himself with the facts and issues involved in the grievance. It provides an opportunity for the respondent to present any alternative facts and issues or points of disagreement in writing during the initial phase of grievance processing. It also provides the opportunity for the respondent to acknowledge the merit of the grievance and agree to the desired redress which may have been specified by the grievant.

The submission of the respondent's grievance answer to the grievant will assist the grievant in preparing for subsequent steps in the grievance process.

C. Referral of Grievance and Grievance Answer to Appropriate Processing Level: Within five days after receipt of the respondent's written grievance answer, the Title IX coordinator shall determine the appropriate level for first grievance processing and refer the grievance and the grievance answer to the appropriate hearing officer. If no grievance answer has been received on the fifth day after notification of the respondent, the Title IX coordinator shall send a notice of nonresponse to the respondent and her/his immediate supervisor. If no grievance answer has been received within five days after issuance of this notice, the Title IX coordinator shall refer the grievance to the appropriate hearing officer with a notice of nonresponse. A notice of nonresponse shall also be sent to the grievant.

The criteria which shall be used by the Title IX coordinator in determining the appropriate level for first processing of a grievance include:

Level I: Grievance involving policy, procedure or practice of single unit or subunit of agency/ institution.

Level II: Grievance involving administrative policy, procedure, or practice of entire agency/institution.

Level III: Grievance involving policy for which governance is primarily responsible.

The hearing officer acting at each level shall be:

Level I: Administrator/supervisor of unit or submit of agency/institution.

Level II: Chief administrative officer of agency/institution (or designated representative).

Level III: Governing board of agency/institution (or designated subunit) or hearing panel established by governing board.

If the grievance is referred to Level II or III for first processing, the Title IX coordinator shall briefly state the reason(s) for this decision in the referral.

The hearing officers specified in this procedure were selected on the basis of their ultimate decisionmaking authority at each level of grievance processing. Such decisionmaking authority is critical to grievance resolution. Although the impartiality of such internal officers is often questioned, the impartiality of the overall procedure is maximized by its provision of appeals steps under which a grievance may be heard at a level above that at which a Title IX violation is alleged to have occurred.

IV. Grievance Processing Levels

A. Level I:

1. **Level I hearing officer**—The hearing officer serving in all Level I grievance activities shall be the administrator or supervisor of the unit or subunit of *(name of institution/agency)* in which the Title IX violation is alleged to have occurred, or her/his designee.

   1. The particular title of the Level I hearing officer will vary from agency or institution to institution. In local education agencies, the Level I hearing officer would usually be the principal of a school; in institutions of postsecondary education, the Level I hearing officer would usually be the chair of a department or the dean of a school within the institution.

2. **Written grievance decision by Level I hearing officer**—When a grievance and grievance answer (or notice of nonresponse) are referred to Level I for first processing, the Level I hearing officer shall, within five days of referral, submit a written grievance decision to the grievant, the respondent, and the Title IX coordinator. The decision shall: 1) confirm or deny each fact alleged in the grievance and in the respondent's answer; 2) indicate the extent to which the grievance has merit; 3) indicate acceptance or rejection of any redress specified by the grievant or respondent; *or* 4) indicate that the hearing officer will conduct an informal hearing on the grievance before rendering a decision.

   2. Because a Level I grievance often involves a comparatively simple issue (e.g., an inadvertent but clear case of noncompliance by a single staff member, with responsibility and redress accepted in the respondent's grievance answer), provision of a processing step permitting a written grievance decision without prior hearing is made at this Level only. A simple written decision by the hearing officer may result in the resolution of many grievances without a hearing and further expenditure of time by the persons involved in the grievance and grievance processing.

3. **Response to written grievance decision by grievant and respondent—request for informal Level I hearing**—If the decision is not accepted by either the grievant or the respondent, she or he shall so notify the Title IX coordinator in writing within five days of the receipt of the grievance decision, and state her/his request for a Level I informal hearing.

   If, within five days of the issuance of the written grievance decision, no written request for an informal Level I hearing has been received from either the grievant or the respondent by the Title IX coordinator, any corrective action specified in the decision shall be taken, and the grievance shall be considered closed.

3. Because a written grievance decision is rendered at this step without any mutual discussion of issues between the hearing officer and both parties to the grievance (the grievant and the respondent), either party is entitled to request an informal Level I hearing for the purpose of mutual discussion of grievance issues.

4. **Nature of a Level I informal hearing**—A Level I informal hearing shall be conducted in two circumstances:

   a) the Level I hearing officer determines that the information provided in the written grievance and grievance answer is insufficient to permit the rendering of a grievance decision; or

   b) either the grievant or the respondent is dissatisfied with the written grievance decision of the Level I hearing officer.

   Its purpose shall be to encourage free and informal discussion of grievance issues between the grievant, the respondent, and the Level I hearing officer.

4. A Level I informal hearing permits discussion of the grievance between those parties most directly involved. Both the facts relating to the alleged Title IX violation and alternatives for corrective action are discussed in the presence of a third party (the Level I hearing officer).

   A Level I informal hearing differs from a pregrievance meeting in that a third party is involved in a decisionmaking capacity, and that records regarding proceedings and outcomes are entered into grievance files.

5. **Scheduling of Level I informal hearing**—A Level I informal hearing shall be scheduled by the Title IX coordinator within five days of the receipt of a request for such hearing from the grievant, the respondent, or the Level I hearing officer. The Title IX coordinator (or designated representative) shall schedule the hearing at a time and place acceptable to all parties, not to exceed ten days after the receipt of a request for such a hearing.

6. **Persons present at the informal hearing**—Persons present at the informal hearing shall include the grievant, the respondent, any individual requested by either party to provide assistance relevant to consideration of the grievance, and the Level I hearing officer. The Title IX coordinator shall be present to act as moderator if requested by the Level I hearing officer.

7. **Procedures governing the conduct of the Level I informal hearing**—Any procedures established to govern the conduct of the Level I informal hearing shall be at the discretion of the Title IX coordinator.

7. The informal nature of the Level I hearing may be best maintained without formal procedural requirements. If the Level I hearing officer determines that some procedural specificity is advisable in a particular case, she/he may delineate procedures appropriate to the particular case.

8. **Level I informal hearing decision**—Within five days after the informal hearing, the Level I hearing officer shall issue a written hearing decision which includes a statement regarding the validity of the grievance allegation, and a specification of any corrective action to be taken. This decision shall specify the reasons on which the decision is based. Copies of the decision shall be sent to the grievant, the respondent, and the Title IX coordinator.

9. **Continued discussions**—In the event that the grievance cannot be adequately discussed or resolved during the course of the informal hearing, the respondent and the hearing officer may agree to continue the informal hearing at a time and place acceptable to all parties. In this event the written decision shall not be required until five days after the final informal hearing.

9. If the time initially allocated for discussion of the grievance in the informal hearing is not adequate, the grievant, the respondent, and the hearing officer may schedule other informal hearings if this is agreeable to all parties. This alternative should be used sparingly and only in those instances where there is real indication that further time is needed for obtaining or clarifying relevant facts or discussing possible forms of corrective action.

10. **Acceptance or rejection of hearing decision by the grievant**—If the grievant rejects the Level I hearing decision, she/he shall, within ten days of the receipt of the hearing decision, notify the Title IX coordinator of her/his intent to appeal the grievance to Level II. This notification shall be in writing. If no such notification is received by the Title IX coorodinator within this time period, any corrective action specified in the hearing decision shall be taken, and the grievance will be recorded as closed by the Title IX coordinator.

11. **No written decision by Level I hearing officer**—In the event that no written decision is issued by the Level I hearing officer within five days after the Level I informal hearing, the Title IX coordinator shall, on the fifth day, send a notice of nonresponse to the Level I hearing officer and to her/his immediate supervisor. If no response is received by the tenth day following the Level I hearing, the grievance shall be immediately referred by the Title IX coordinator for processing at Level II. This referral shall consist of the scheduling of a time and place for a Level II hearing, and notification of the

grievant, the respondent, and the Level II hearing officer.[4]

B. Level II:

1. **Level II hearing officer**—The officer serving in all Level II grievance activities shall be of the *(title of chief administrative officer of the agency/institution)*, or her/his designee.

1. If the chief administrative officer of the agency/institution designates a representative to serve as Level II hearing officer, this representative must be delegated the authority necessary for actual grievance resolution. Because the chief administrative officer may not delegate ultimate accountability for Title IX compliance, however, it is advisable that the chief administrative officer require periodic reporting of grievance issues and resolutions from any person(s) designated Level II hearing officer.

2. **Nature of a Level II hearing**—A Level II hearing shall be conducted in three circumstances:

   a) A grievant is not satisfied with the decision rendered in a Level I hearing and appeals the grievance to Level II by means of written notification to the Title IX coordinator within ten days of the receipt of the Level I hearing decision;

   b) no written Level I hearing decision is issued by the Level I hearing officer within ten days after the completion of the Level I hearing, and the grievance is immediately referred by the Title IX coordinator for processing at Level II; or

   c) the grievance involves policies, procedures, or practices which are general throughout the institution/agency and is referred by the Title IX coordinator (or designated grievance representative) for first processing at Level II, with a written statement regarding the potential pervasiveness of the grievance and the numbers and roles of affected persons.

3. **Scheduling of a Level II hearing; notification of participants**—The Title IX coordinator shall arrange a date for Level II hearing and notify the grievant, the respondent, and the Level II hearing officer of the time, place, and minimim duration of the hearing. The hearing shall be held within five days after appeal/referral of the grievance to Level II. If any written materials or records relevant to the grievance are transmitted to the Level II hearing officer by the Title IX coordinator at the time of notification, copies of these materials shall also be transmitted to the grievant and the respondent.

3. The Title IX coordinator shall attempt to schedule grievance hearings at the maximum convenience of all parties involved, at a date not to exceed ten days from the date of appeal/referral of the grievance to Level II.

   The requirement that the grievant and the respondent receive copies of any materials or records sent to the hearing officer ensures that all principal participants in the hearing have access to the same information relevant to the grievance.

4. **Persons present at the Level II hearing—** Persons present at the informal hearing shall include the grievant, the respondent, any representative(s) of either the grievant or the respondent, any individual requested by either party to provide information relevant to the evaluation of the grievance, and the Level II hearing officer. The Title IX coordinator (or designated representative) shall be present to act as moderator and recorder. Hearings shall not be open to other persons unless requested or approved by the grievant.

4. In general, grievance hearings should be conducted in such a way as to ensure confidentiality to all individuals involved. It is recognized, however, that there are instances when an open hearing would be desirable as a method of demonstrating the grievance process or encouraging greater awareness and discussion of the issues involved. If a determination is made to open the grievance hearing to others, it must be done at the request of the grievant or with the approval of the grievant.

5. **Procedures governing the conduct of the Level II hearing—**

   a. **Duration:** No hearing shall be less than three hours long, unless all parties consent to a shorter hearing.

   a. Stipulation of a minimum hearing duration protects all parties from a merely *pro forma* processing of the grievance. The hearing may be shortened or extended as circumstances require as long as this modification is agreed to by both parties.

   b. **Time allocations:** The time established for the duration of the hearing shall be allocated in equal parts to the grievant and the respondent. The Title IX coordinator shall moderate the usage of time. Time utilized in hearing and responding to any questions posed by the hearing officer shall not be charged against the time allocation of either party.

   b. Equal allocation of time to both parties ensures that each party has a fair amount of time to present her/his case. It is not anticipated that either party would use all her/his allocated time at once. Time would be reserved for questioning of witnesses and rebuttal of arguments presented by the other side.

   c. **Grievance witnesses:** Both the grievant and the respondent shall have the right to present such witnesses as they deem necessary to develop the facts pertinent to the grievance.

   c. The grievant(s) and the respondent(s) shall have the right to assistance in the presentation and documentation of their case. A list of persons and/or organizations knowledgeable regarding Title IX should be maintained by the Title IX coordinator. Respondents should have access to information from the Title IX coordinator, knowledgeable administrators, or the institution's/agency's legal counsel when appropriate.

   d. **Questioning of witnesses:** Formal rules of evidence shall not be applied at the Level II grievance hearing. The grievant and repondent shall have the right to use their allocated time to ask questions of any person participating in the hearing.

   d. Although formal rules of evidence are intended to ensure that evidence is reliable and relevant, a grievance procedure should not confer advantage on those with legal training.

6. **Level II hearing decision—**Within five days after the Level II hearing, the Level II hearing

officer shall issue a written decision which includes a statement regarding the validity of the grievance allegation, and a specification of any corrective action to be taken. This decision shall specify the reasons on which the decision is based. Copies of the decision shall be sent to the grievant, the respondent, and the Title IX coordinator.

7. **Acceptance or rejection of hearing decision by the grievant**—If the grievant rejects the Level II hearing decision, she/he shall, within ten days of the receipt of the hearing decision, notify the Title IX coordinator of her/his intent to appeal the grievance to Level III. This notification shall be in writing. If no such notification is received by the Title IX coordinator within this time period, any corrective action specified in the Level II hearing decision shall be taken, and the grievance will be recorded as closed by the Title IX coordinator.

8. **No written decision by Level II hearing officer**—In the event that no written decision is issued by the Level II hearing officer within five days after the Level II hearing, the Title IX coordinator shall, on the fifth day, send a notice of nonresponse to the Level II hearing officer and to her/his immediate supervisor. If no response is received by the tenth day following the Level II hearing, the grievance shall be immediately referred by the Title IX coordinator for processing a Level III. This referral shall consist of a formal notification of the governing board of *(name of institution/agency)* or its designated representative regarding the appeal of the grievance and a request for determination by the board of the form of Level III processing to be utilized.

C. Level III:

1. **Level III hearing officer(s)**—The hearing officer(s) serving in all Level III activities shall be the governing board of *(name of agency/institution)* or a representative designated by the board. For purposes of actual grievance hearing, the governing board may delegate authority to a hearing panel established by the board for this purpose.

1. Processing of Level III grievances at the level of the institutional/agency governing board has the advantage of providing for final resolution of grievances by those who may be least directly involved in them while at the same time having ultimate authority with regard to all institutional/agency policies, procedures, and practices. In addition it subjects the alleged violation to scrutiny by governors who are usually representatives of the larger community.

2. **Nature of a Level III hearing**—A Level III hearing shall be conducted in three circumstances:

a) a grievant is not satisfied with the decision rendered in a Level II grievance hearing and appeals the grievance to Level III by means of written notification to the Title IX coordinator within ten days of the receipt of the Level II hearing decision;

b) no written Level II hearing decision is issued by the Level II hearing officer within ten days after the completion of the Level II hearing, and the grievance is immediately referred by the Title IX coordinator for processing at Level III; or

c) the grievance involves policies, procedures, or practices for which the governing board has primary responsibility and is referred by the Title IX coordinator for first processing at Level III, with a written statement regarding board responsibility for the policies, procedures, or practices alleged to be in violation of Title IX.

c) Examples of matters which might be referred for first processing at Level III include those relating to the selection of the chief executive officer and key staff of the institution/agency, budget allocations, etc.

3. **Alternatives for Level III grievance hearings**—For any grievance referred for hearing at Level III, there shall be three alternative methods of grievance processing:

3. Because of the time and financial constrictions placed on many governing boards, three alternatives are provided for the hearing of Level III grievances. The board must determine which method can most easily ensure a prompt and equitable resolution of the particular grievance. Examples of circumstances which might result in the selection of each method are provided below:

a) the grievance hearing may be conducted by the governing board in its entirely;

a) Hearing by the board in its entirety—This alternative may be appropriate for grievances involving issues which have a potentially pervasive impact on the institution/agency.

b) the grievance hearing may be conducted by a subgroup of at least three members of the governing board; or

b) Hearing by a subgroup of the board—This alternative may be appropriate as a means of limiting the time required by individual members or reducing the travel expenses of the governing board.

c) the grievance hearing may be conducted by a hearing panel established by the board for that purpose, consisting of not fewer than five persons. This method may be requested by the grievant in writing at the time of appeal/referral of the grievance to Level III processing.

The governing board shall establish and publish criteria relative to the determination of the method of processing to be used for a particular grievance.

c) Hearing by a hearing panel—This alternative is required when specified by the grievant and may be used when members of the governing board do not live in the same community, or when the grievance alleges a Title IX violation in a policy or action of the governing board itself.

In any of the alternatives provided the grievance would be heard by more than two persons. This avoids the bias possible in a decision made by a single member, and the possibility of tied votes in a grievance decision made by two members.

Provision should be made in each for the recording of a minority report which dissents from the majority of the group hearing the grievance.

4. **Determination of method of processing at Level III**—The determination of the method to be used for the processing of any particular grievance shall be made by the Title IX coordinator on the basis of the criteria established by the governing board, unless a request for processing by the hearing panel is specified by the grievant in her/his grievance/appeal. Such determination shall be made within five days after referral of the grievance for Level III processing, at which time the appropriate first step for the method selected shall occur.

5. **Grievance hearings conducted by the governing board or its subunit: schedule of implementation activities**—If it is determined that the Level III hearing shall be conducted by the governing board or its subunit, processing activities shall occur on the following schedule:

5. The particular sequence and scheduling of processing activities is the same whether the Level III hearing is conducted by the board in its entirety or by a subunit. These vary slightly from the sequence and scheduling of those necessitated by the use of the hearing panel method.

a) **Scheduling of the hearing:** The Title IX coordinator shall arrange a date for the Level III hearing and notify the grievant, the respondent, and the Level III hearing officer(s) of the time, place, and minimum duration of the hearing. This shall be accomplished no later than five days after the appeal/referral of the grievance to Level III for determination of the processing method to be used. If any written materials or records relevant to the grievance are transmitted to the governing board by the Title IX coordinator at the time of notification, copies of these materials shall also be transmitted to the grievant and to the respondent.

a) Scheduling of the hearing is the first step in the method of processing in which the hearing is conducted by the governing board or its subunit. It must therefore be completed within five days after the grievance is appealed/referred to Level III for the determination of the processing method to be used.

b) **Conducting the hearing:** The hearing shall be scheduled for and conducted on a date not to exceed fifteen days after the appeal/referral of the grievance to Level III.

b) The fifteen-day interval is permitted between appeal/referral of the grievance to Level III and the conducting of the grievance hearing by the governance board in anticipation of possible travel requirements of board members living outside the immediate geographic area of the institution/agency. In those instances where considerable travel may be involved, the Title IX coordinator may extend this interval with the prior approval of the grievant. Such time extensions should not result in an interval exceeding more than twenty days from the appeal/referral of the grievance to Level III.

c) **Issuance of final hearing decision:** The board or its subunit shall issue a written decision regarding the validity of the grievance and any corrective action to be taken within five days after the Level III hearing.

6. **Grievance hearings conducted by a hearing panel: schedule of implementation activities—** If it is determined that the Level III hearing shall be by a hearing panel established by the governing board, processing activities shall occur on the following schedule:

6. The particular activities involved in the processing of a Level III grievance under the hearing panel method vary somewhat from those involved in processing by the board or its subunit. The scheduling of the processing sequence is therefore also different.

a) **Referral of grievance to hearing panel; submission of names of possible panel members to governing board for selection:** The Title IX coordinator shall make formal notification to the board of the referral of a grievance for hearing panel processing at Level III. This shall occur no later than five days after the appeal/referral of the grievance to Level III. At the time of this notification, the Title IX coordinator shall submit to the board a list of names of possible hearing panel members.

a) The first step in the hearing panel method of processing is the Title IX coordinator's notification of the board regarding the selection of the method and her/his submission to the board of a list of potential hearing panel members. This first step must be completed no later than five days after the grievance is appealed/referred to Level III for the determination of the processing method to be used. To facilitate the submission of names of possible panel members, the Title IX coordinator may wish to maintain a pool of relevant names on a continuing basis.

b) Designation of hearing panel members by governing board; notification of grievant and respondent regarding designees by the title IX coordinator: The members of the panel shall be designated by the governing board or an authorized representative on the basis of criteria specified by the Title IX coordinator. These criteria shall include such factors as representation of the various constituencies of *(name of institution/agency)*, male/female and racial-ethic representation, knowledge of the particular grievance area, etc. The governing board shall select a total of not less than ten names of potential panel members.

The grievant and the respondent shall be notified of the names of the first five designees within ten days after the referral of the grievance to Level III. The grievant and the respondent shall be permitted to challenge not more than three of the panel members named; such challenges shall be submitted in writing to the Title IX coordinator within two days after notification. If such challenge is made by either party, the protested person(s) shall be replaced by the next person(s) named on the list of designees.

Before serving on the hearing panel, each member shall participate in a two-hour orientation session provided by the Title IX coordinator or her/his designated representative. There shall be no limitation placed on the number of times that an individual may serve as a panel member.

b) A variety of comments may be made regarding the designation of hearing panel members:

Because panel members act on behalf of and make recommendations to the governing board, they are designated by that board or its representatives.

The specification of criteria for selection of hearing panel members can serve to facilitate the representatives of the panel and minimize both the actuality or the appearance of panel "stacking."

The Title IX coordinator plays a key role in identifying persons—students, community members, faculty, administrators—willing to serve on a hearing panel.

The notification of grievant and respondent regarding panel designees and the provision of a two-day period for challenge of three names is a means of demonstrating a commitment to equitability and responsiveness to all parties to the grievance, while ensuring that the naming of the panel may be accomplished without substantial delay.

Title IX issues can be complex. For this reason it is recomemnded that hearing panel members be required to attend at least a two-hour orientation before serving on a hearing panel. Such orientation should include a review of the provisions of the Title IX regulation and related guidelines, memoranda, and precedents of other Federal nondiscrimination laws.

Such orientation of panel members will expedite and improve the quality of the hearing panel's decisionmaking process by reducing the members' requirements for clarification of Title IX requirements during the hearing. No limits are placed on an individual's length of service as a hearing panel member. It is wise to strike a balance between inclusion of knowledgeable, experienced panelists, and persons with less experience in this area. This increases the general understanding of the issues within various constituencies and facilitates the continued development of a pool of knowledgeable persons.

c) **Scheduling of the hearing:** The Title IX coordinator shall arrange a date for the Level III hearing and notify the grievant, the respondent, and the designated panel members of the time, place, and minimum duration of the hearing. This shall be accomplished no later than ten days after the referral of the grievance to Level III. If any written materials or records relevant to the grievance are transmitted to the panel members by the Title IX coordinator at the time of notification, copies of these materials shall also be transmitted to the grievant and to the respondent.

If any of the first five designated panel members are unable to serve on the date scheduled for the hearing, they shall be replaced by the persons whose names appear on the original list of ten designees.

d) **Conducting of the hearing:** The hearing shall be scheduled for and conducted on a date not to exceed fifteen days after the appeal/referral of the grievance to Level III.

d) The Title IX coordinator shall attempt to schedule the hearing at the maximum convenience of all parties involved. The fifteen-day-day interval between appeal/referral of the grievance to Level III and the conducting of the hearing is designed to accommodate the interim steps (and corresponding time intervals) of referral of the grievance to the hearing panel and the designation of panel members.

e) **Submission of panel recommendations to the governing board:** The hearing panel shall make written notification of its findings to the governing board or its representative within five days after the Level III hearing. These findings shall include the panel's determination regarding the validity of the grievance and its recommendations for any necessary corrective action, as well as a statement of the reasons on which the findings have been based. Copies of the findings shall be sent to the board, the grievant, the respondent, and the Title IX coordinator.

All findings and recommendations of the hearing panel shall be determined by majority vote. The procedural steps to be followed during deliberations shall be determined by the hearing panel.

e) Because the hearing panel is constituted by the governing board and derives its authority from this board, the findings and recommendations of the hearing panel are submitted to the governing board for final action. This is necessary because the board retains its ultimate authority for the policies, procedures, and practices of the institution/agency.

f) **Issuance of final decision:** The governing board or its authorized representative(s) shall consider the recommendations of the hearing

panel and issue a final decision regarding the validity of the grievance and any corrective action to be taken within five days after the receipt of the findings of the hearing panel.

7. **Persons present at the Level III hearing—** Persons present at the Level III hearing shall include the grievant, the respondent, any representative(s) of either the grievant or the respondent, any individual requested by either party to provide information relevant to the evaluation of the grievance, and those members of the governing board or hearing panel responsible for hearing the grievance. The Title IX coordinator (or designated representative) shall be present to act as recorder. Hearings shall not be open to other persons unless requested or approved by the grievant.

8. **Procedures governing the conduct of the Level III hearing—**The specification of detailed procedures for the conduct of Level III hearings shall be the option of the governing board. General procedures guiding the conduct of Level III hearings shall be, for the most part, similar to those used at Level III.

   a) **Duration:** The governing board (or its subunit) or the designated hearing panel shall determine the duration of the hearing. No Level III grievance hearing shall be less than three hours unless all parties consent to a shorter hearing.

   b) **Time allocations:** The time established for the duration of the hearing shall be allocated in equal parts to the grievant and the respondent. Usage of time shall be moderated by the person designated by the board of hearing panel to perform this function.

   c) **Grievance witnesses:** Both the grievant and the respondent shall have the right to present such witnesses as they deem necessary to develop the facts pertinent to the grievance.

   d) **Questioning of witnesses:** Formal rules of evidence shall not be applied at the Level III grievance hearing. The grievant and respondent shall have the right to use their allocated time to ask questions of any person participating in the hearing.

e) **Introduction of new information:** During the hearing of a grievance appealed from Level II, neither party shall be permitted to introduce information not presented at the Level II hearing, unless she/he can show cause as to why it was not introduced at Level II.

e) The provision that new evidence may not be introduced without just cause is included to ensure that relevant information is not withheld by either party as a method of prolonging the grievance processing, protecting unidentified respondents, or avoiding the revelation of further discriminatory practices and policies.

f) **Moderation of Level III hearings:** The governing board (or its subunit) or the panel responsible for grievance hearing shall designate a member who shall moderate the Level III hearing to ensure its compliance with all procedural requirements.

9. **Level III hearing decision:** The governing board of *(name of institution/agency)* shall issue a written decision which includes a statement regarding the validity of the grievance allegation and a specification of any corrective action to be taken. This decision shall constitute the final decision issued pursuant to any grievance.

9. Written decisions are required to enhance the quality of deliberation and decisionmaking. Written decisions, moreover, may serve as records of precedents useful to other grievants and respondents. Although the Title IX coordinator may assist the governing board by providing technical information and services in the editing and the preparation of the decision, the Title IX coordinator should not participate in the actual decisionmaking regarding the grievance.

If the Level III hearing was conducted by the governing board itself or by its subunit, the decision shall be issued within five days after such hearing.

If the Level III hearing was conducted by a hearing panel, the decision shall be issued within five days after receipt of the findings and recommendations of the hearing panel by the governing board. If the governing board rejects the findings and recommendations of the hearing panel, its decision shall include a statement of its reasons for such rejection, stated in detail.

The findings and recommendations of any hearing panel delegated responsibility for the conducting of Level III grievance hearings should be considered compelling; it is unlikely that they should be rejected except in the most unusual circumstances. If such rejection does occur, the reasons should be clearly stated in the final decision.

Copies of the decision shall be sent to the grievant, the respondent, the Title IX coordinator, and the *(title of the chief executive officer of the institution/agency)*.

All Level III hearing decisions shall be based on a majority vote by the governing board or its designated subunit. Any board member in disagreement with the majority shall have the option to prepare a dissenting opinion for inclusion within the final decision.

In the case of grievances processed by a Level III hearing panel, the governing board may delegate authority for review/approval of panel recommendations to one member or representative. If a recommendation for rejection of panel recommendations is made by this member or representative, all records shall be transmitted to the governing board, which must approve the rejection by a vote of the majority.

The Level III grievance procedure is designed to ensure that all Level III grievances are decided by a minimum of three persons. Although the governing board may delegate authority to review and approve panel recommendations to a single member or representative, this is permissible only because the findings and recommendations of the hearing panel reflect a majority vote taken among five persons. Authority to reject such recommendations may therefore not be delegated to a single individual. Rejection of hearing panel recommendations may be done only by a majority vote of the governing board.

V. Grievance Appeals

A. Grievant's Rights:
If a grievant is dissatisfied with the grievance decision received at Levels I or II, she/he may appeal the grievance to the next level. Such an appeal shall be made in writing to the Title IX coordinator within ten days of the receipt of the unsatisfactory decision.

A. Provision of the right of appeal is basic to the equitability of an internal grievance procedure. Appeal of a grievance to a higher level can maximize the impartiality of the grievance hearing.

B. Notification of Rights of Appeal:
Upon receipt of the grievance decision from the Level I or Level II hearing officer, the Title IX coordinator shall make written notification to the grievant of her/his right to appeal and of the procedure and deadline for submission of such an appeal.

B. Continuing notification regarding the grievant's right to appeal maximizes the grievant's understanding of the procedure and increases the equitability of the procedure.

VI. General Provisions

A. Time Calculations and Extensions:

1. **Calculation of time**—Saturdays, Sundays, and holidays shall be disregarded in calculating time periods specified in this grievance procedure.

1. Title IX requires that grievance procedures provide for the prompt and equitable resolution of complaints. Several points must be made with regard to the assessment of "promptness" as provided in this sample procedure.

   - This procedure is based on the calculation of time periods according to the working days of education agencies/institutions rather than the calendar days used by the Office for Civil Rights, ED in calculating the 180-day period in which Federal complaints must be filed.

   - Grievants are allowed a 60-day period after the occurrence of the alleged Title IX violation in which to file a grievance under this sample procedure. Provision of such a lengthy filing period is made in order to ensure equitability to

the grievant. If, however, a grievant files on the 60th day, and the grievance is processed at all three levels, utilizing all maximum time intervals permitted in the sample procedure, grievance resolution would require a time period greater than 180 calendar days from the alleged Title IX violation.

- It is anticipated that few grievants would utilize the full 60-day interval for grievance filing and that few grievances would require hearing at all three processing levels. It is assumed that, in most instances, this sample procedure would provide for prompt resolution of Title IX grievances. If an agency/institution wishes to ensure, however, that the processing of grievances utilizing all maximum time intervals is not perceived as obstructing the filing of Federal complaints, it should include notice of the Federal filing deadline within its initial notification regarding the internal grievance procedure and any subsequent notifications to grievants of their right of appeal.

- Many agencies/institutions may find it possible to complete grievance actions in fewer than the maximum days allotted in the sample procedure. The time allotments in this procedure reflect a general estimate of feasibility across many agencies and institutions; they may of course be adapted to meet particular needs.

2. **Extension of time**—Any time limits set by this procedure may be extended by mutual consent of the grievant(s) and the respondent(s).

2. Grievants and respondents should agree to extend deadlines only for reasonable cause.

B. Grievant's Right to Information:

A grievant(s) may request access to information and records in the possession of the agency/institution which may bear upon the validity of the grievance. If such requested information requires an unreasonable expenditure of resources by the agency/institution, such request may be refused provided that the information is not submitted as evidence by the respondent(s), and that this refusal is considered during the grievance hearing. In order to protect the privacy of persons not directly involved in the grievance proceeding, the institution shall reserve the right to expunge names and any identifying information not directly relevant to the substance of the grievance from any information or records supplied to the grievant.

B. This provision guarantees the grievant(s) access to information in the possession of the agency/institution that may be essential to assessing the validity and the extent of the alleged violation. When such requests are unreasonable or when they may be used as a means of harassment, they may be denied by the institution/agency. Such denial of information, however, waives the right of the respondent to use the information during any hearing. The agency/institution retains the option of deleting names and any identifying information irrelevant to the evaluation of the grievance from any information supplied. This may be done to protect the privacy of persons not party to the grievance.

C. **Grievant's Right to Representation and Assistance:**

1. **Right to representation**—The grievant(s) has the right to be represented by knowledgeable persons, organizations, or groups of her/his selection at any point during the initiation, filing, or processing of the grievance. The Title IX coordinator shall provide help in identifying such knowledgeable persons or groups.

1. The grievant's right to representation is one component of due process. Grievants may face agencies and institutions represented by legal counsel, or they may simply be intimidated by the grievance procedure. Assistance by the Title IX coordinator in identifying knowledgeable persons is a mechanism for enhancing the equitability of the procedure.

2. **Right to assistance**—The institution/agency shall provide assistance to grievants, including access to copies of the Title IX regulation, related guidelines, memoranda, and other relevant materials supplied the institution by the Federal government as well as access to public grievance records. In addition, the Title IX coordinator and designated representatives shall provide consultation and assistance in the interpretation of such information and the use of this grievance procedure.

2. The requirement that potential grievant(s) be provided full information about the requirements of Title IX and previous utilization of the grievance process is designed to create an atmosphere of open problem solving and to eliminate anay grievances that may be based on misunderstandings of the requirements of the regulation. It is advisable to provide information and materials in the library collection and in the Title IX coordinator's office, and to ensure continuing notification of Title IX rights in employee and student materials and publications.

D. **Training of Grievance Hearing Officers:**

All persons designated as grievance hearing officers shall receive a minimum of two hours training regarding Title IX regulatory requirements and nondiscrimination precedents, and the basic principles and operation of this grievance procedure. This training shall be arranged by the Title IX coordinator. The Title IX coordinator shall also provide continuing consultation to hearing officers regarding Title IX requirements and the implementation of this procedure.

D. The provision of training to hearing officers regarding nondiscrimination requirements and the operation of the grievance procedure is a critical step in ensuring the equitability of the internal grievance procedure. Such training can maximize the impartiality of grievance decisions. Although a two-hour training module is brief, it is supplemented by continuing consultation by the Title IX coordinator.

E. **Confidentiality of Grievance Handling:**

1. **Confidentiality of proceedings**—The grievant(s) shall determine whether any grievance hearing or other grievance procedure shall be open to the public or open only to participants.

1. If the grievant feels that the grievance is of general importance, she/he may wish to have any or all hearings, meetings, or procedures open to the public. This would also enable other members of the institutional/agency community to witness the process in actual operation.

2. **Confidentiality of file records**—A grievant(s) shall have the right to determine whether or not her/his grievance record shall be open or closed to the public. Should the grievant decide that the grievance record shall be open to the public, she/he shall have the additional right to have any matter which directly or indirectly identifies the grievant removed from all grievance records or documents open to the public. No record of the grievance shall be entered in the personal file of any student or employee.

2. Unless grievants can be assured of confidentiality, they may be discouraged from using the internal grievance procedure.

F. Maintenance of Grievance Records:

1. Recording of grievance hearings—

a) **Grievant's rights:** Any grievant may, at her/his expense, record any grievance hearing or proceeding on a tape recorder or similar device.

a) Grievants should have the right to develop their own documentation of any grievance hearings or related meetings.

b) **Institution/agency responsibility:** Level II and Level III grievance hearings shall be recorded on recording devices supplied by the Title IX coordinator. Such recordings shall be made available to the grievant(s) and the respondent(s) at their request. Such recordings shall be maintained for a period of three years after resolution of the grievance.

b) The maintenance of tape recordings of grievance hearings or meetings provides data which may be used during the appeal of a grievance from one level to another or for review of misunderstandings which may arise regarding the hearing itself. Although three years is the period established by other Federal non-discrimination law for the maintenance of records relevant to compliance, agencies and institutions may elect to dispose of tape recordings after a shorter interval if detailed, written grievance records are maintained (see next paragraph). The three-year period used in the sample procedure simply results in the availability of more data which may be useful in the event of a Federal compliance investigation.

2. **Maintenance of written grievance records—**

a) **Confidential grievance files:** Records shall be kept of each grievance. These shall include, at minimum: the name of the grievant and her/his position in *(name of institution/agency);* the date of grievance filing; the specific allegation made in the grievance and any corrective action requested; the names of respondents; the levels of processing and the resolution, date, and hearing officer(s) at each level; a summary of major points, facts, and evidence presented by each party to the grievance; and a statement of the final resolution and the nature and date of any corrective action taken. Such records shall be maintained on a confidential basis unless otherwise specified by the grievant.

a) Maintenance of detailed, written grievance files provides data which may be valuable in the event of a Federal compliance investigation and data which may be used by education institutions/agencies in the monitoring and planning of their own compliance efforts.

b) **Public grievance files:** For purposes of the dissemination of grievance precedents, separate file records shall be kept which indicate only the subject matter of each grievance, the resolution of each grievance, and the date of the resolution. These records shall not refer to any specific individuals and they shall be open to the public.

b) The purpose of maintaining public grievance records is twofold. First, it facilitates research by subsequent grievants for precedents which might relate to their own grievances. Second, it facilitates general public monitoring of the utility of the grievance process. Neither of these reasons requires that the actual identity of the parties to the grievance be recorded. An indication of grievance subject matter (e.g., employment discrimination: nonpromotion of a female administrator; athletic scholarships; etc.) and grievance resolution (e.g., promotion and awarding of back pay; establishment of compensatory scholarships for females, etc.) is sufficient for these purposes.

c) **Duration of maintenance of written grievance records:** All written grievance records shall be maintained for a minimum of three years after grievance resolution.

c) It is recommended that records be maintained for a period of three years. This conforms with the requirements established by other Federal nondiscrimination laws for maintenance of files and records relevant to the determination of compliance as well as to Title IX requirements for maintenance of records related to institutional/agency self-evaluation.

G. **Prohibition of Harassment:** No person shall be subject to discharge, suspension, discipline, harassment, or any form of discrimination for having utilized or having assisted others in the utilization of the grievance process.

G. The provision prohibiting harassment of the grievant or those assisting the the grievant reaffirms a similar provision of the Title IX regulation.

H. **Role of the Title Coordinator:** It is the primary responsibility of the Title IX coordinator to ensure the effective installation, maintenance, processing, recordkeeping, and notification required by the grievance procedure.

H. The Title IX regulation requires that the Title IX coordinator have primary responsibility for the coordination of the grievance process.

I. **Financial Responsibility for Grievance Processing:** All costs involved in the administration of this grievance procedure shall be assumed by *(name of agency/institution).*

I. Compliance with Title IX is a responsibility of the agency/institution by virtue of its receipt of Federal funds. Implementation of a grievance procedure is required by the Title IX regulation.

Appendix B

Sample Notification of a Grievance Procedure

Notification of Title IX Grievance Procedure

It is the policy of *(name of school/institution)* not to discriminate on the basis of sex in its educational programs, activities, or employment as required by Title IX of the 1972 Education Amendments. As a student or employee of *(name of school/institution)*, you are protected from sex discrimination in the following areas:

If you are a student, you may not be discriminated against on the basis of sex in:

- ☐ Admission to most schools
- ☐ Access to enrollment in courses
- ☐ Access to and use of school facilities
- ☐ Counseling and guidance materials, tests, and practices
- ☐ Vocational education
- ☐ Physical education
- ☐ Competitive athletics
- ☐ Graduation requirements
- ☐ Student rules, regulations, and benefits
- ☐ Treatment as a married and/or pregnant student
- ☐ Housing
- ☐ Financial assistance
- ☐ Health services
- ☐ School-sponsored extracurricular activities
- ☐ Most other aid, benefits, or services

If you are an employee, you may not be discriminated against on the basis of sex in:

- ☐ Access to employment, including:
  - —recruitment policies and practices
  - —advertising
  - —application procedures
  - —testing and interviewing practices
- ☐ hiring and promotion, including:
  - —selection practices
  - —application of nepotism policies
  - —demotion, lay off, termination
  - —tenure
- ☐ Compensation, including:
  - —wages and salaries
  - —extra compensations
- ☐ Job assignments, including:
  - —classification and position descriptions
  - —lines of progression
  - —seniority lists
  - —assignment and placement
- ☐ Leaves of absence, including:
  - —leaves for temporary disability
  - —childbearing leave and related medical conditions
  - —childrearing leave
- ☐ Fringe benefits, including:
  - —insurance plans
  - —retirement plans
  - —vacation time
  - —travel opportunities
  - —selection and support for training
  - —employer-sponsored programs
- ☐ Labor organization contracts or professional agreements

If you believe that you have been discriminated against on the basis of sex, you may make a claim that your rights have been denied. This claim or grievance may be filed with *(name of Title IX coordinator or designated employees)*.

You will be asked to write down the actions, policies, or practices which you believe are discriminatory. You may obtain help from the Title IX coordinator *(name, office address, and phone number)*, or anyone you believe is knowledgeable. Once you have filed your grievance, you will be asked to meet with those persons who would be involved in correcting the policies, practices, or programs that you believe are discriminatory. If there is agreement that you were discriminated against, corrective action will be taken to restore your rights. If there is not agreement, you may appeal the grievance to a person with higher authority.

You may also file a complaint of illegal discrimination with the Office for Civil Rights, ED, Washington, D.C., at the same time you file the grievance, during or after use of the grievance process, or without using the grievance process

at all. If you file your Title IX complaint with the Office for Civil Rights, you must file it in writing no later than 180 days after the occurrence of the possible discrimination.

In preparing your grievance you should give thought to the following:

- ☐ The exact nature of the grievance—how you believe you may have been discriminated against, and any persons you believe may be responsible
- ☐ The date, time and place of the grievance
- ☐ The names of witnesses or persons who have knowledge about the grievance
- ☐ Any available written documentation or evidence that is relevant to the grievance
- ☐ The actions that could be taken to correct the grievance

If you wish to discuss your rights under Title IX, to obtain a copy of the full Title IX grievance procedures, or to obtain help in filing a grievance, contact the Title IX coordinator or your designated Title IX grievance representative *(list names, office addresses, and phone numbers of all representatives).*

Appendix C

Sample Grievance Filing Form

TITLE IX GRIEVANCE FILING FORM

Date _____

Your name _____

Your school and/or position _____

Place where you may be reached _____

Address _____

Telephone Number _____

Nature of your grievance (Please describe the policy or action you believe may be in violation of Title IX and identify any person(s) you believe may be responsible.)

_____

_____

_____

If others are affected by the possible violation, please give their names and/or positions.

_____

_____

_____

If you wish, please describe any corrective action you would like to see taken with regard to the possible Title IX violation or provide other information relevant to this grievance.

_____

_____

_____

_____
Signature of grievant

_____
Signature of person receiving grievance

_____
Place of grievance filing

Appendix D

Sample Grievance Case Records

Grievance number _____

GRIEVANCE CASE RECORD

Filing and Initial Processing

Name of grievant(s) _____

School and/or position _____

Nature of grievance Student ☐ Employee ☐

Specific grievance

_____

_____

_____

Suggested corrective action, if given _____

_____

_____

Any pregrievance contacts Yes ☐ No ☐

Date grievance filed _____ Place grievance filed _____

Level of initial consideration Level I ☐ Level II ☐ Level III ☐

Identified respondent _____ Date notified _____ Date ans. rec'd. _____

Identified respondent _____ Date notified _____ Date ans. rec'd. _____

Respondent's answer
Agrees with facts ☐
Disagrees with facts ☐
Requests hearing ☐

Hearing officer _____ Date notified _____ Date decision rec'd. _____

Decision of hearing officer
Accepts grievant's corrective action ☐
Proposes alternative corrective action ☐
Requires Level I hearing ☐

Grievant's response
Accepts corrective action ☐
Requests hearing ☐

If hearing requested

Date of hearing _____
Time of hearing _____
Place _____
Date notification sent _____

If corrective action accepted

Date of notification of respondent and hearing officer _____

Corrective steps–description and dates

D-1

Grievance number

GRIEVANCE CASE RECORD

Level I Informal Hearing

Date of hearing_____ Time of hearing_____ Place of hearing_____

Persons present: Grievant(s)_____

_____

Respondent(s)_____

Hearing officer_____

Title IX coordinator or her/his designee: _____

Facts of grievance

Areas of agreement

Areas of disagreement

Corrective actions

Areas of agreement

Areas of disagreement

Hearing officer's decision

Date received_____

Content of decision_____

Grievant's response Date of grievant's response_____

Decision accepted_____ Decision appealed_____

Corrective steps–description and dates

Scheduling of Level II hearing

Date of notification of Level II hearing

_____

Level II officer_____
Date of hearing_____
Time of hearing_____
Place_____
Date notification sent_____
Materials sent, if any_____

Grievance number

GRIEVANCE CASE RECORD

Level II Hearing

Date of hearing_____ Time of hearing_____ Place of hearing_____

Persons present: Grievant(s)_____

_____

Respondent(s)_____

Hearing officer_____

Title IX coordinator or her/his designee:_____

Facts of grievance

Areas of agreement

Areas of disagreement

Corrective actions

Areas of agreement

Areas of disagreement

Hearing officer's decision

Date received_____

Content of decision_____

Grievant's response Date of grievant's response_____

Decision accepted_____ Decision appealed_____

Corrective steps–description and dates

Scheduling of Level III hearing

Date of notification of Level III hearing

_____

Level III officer_____
Date of hearing_____
Time of hearing_____
Place_____
Date notification sent_____
Materials sent, if any_____

Grievance number

GRIEVANCE CASE RECORD

Level III Hearing

Date of hearing_____ Time of hearing_____ Place of hearing_____

Persons hearing grievance: Total board_____ Board subunit_____ Hearing panel_____

Persons present:

Grievant(s)_____

_____

Respondent(s)_____

Hearing officers_____

_____

Title IX coordinator_____

Facts of grievance

Areas of agreement

Areas of disagreement

Corrective actions

Areas of agreement

Areas of disagreement

Hearing officer's decision

If board, date of decision_____ Content of decision_____

Date of notification of grievant/ respondent_____ _____

If panel, date of recommendation_____ Content of recommendation_____

Date of board action_____ _____

Date of notification of grievant/ respondent_____

Corrective steps—description and dates

Grievance number

GRIEVANCE CASE RECORD

Follow-up and Monitoring

Name of grievant(s)_____

_____

Specific grievance_____

_____

_____

Corrective action specified in final grievance decision_____

_____

_____

_____

Date of final decision_____

Hearing officer_____

Review of decision for necessary modifications of policy, procedure, or practice

Name of assigned reviewer_____

Date of review_____

Modifications needed_____

_____

_____

Implementation of modifications

Task(s)	Responsible staff member	Schedule for completion
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Assistance provided to responsible staff members to facilitate implementation–description and dates

_____

_____

Monitoring of modifications

Task(s)	Schedule for completion	Date accomplished	Problem(s) identified
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Recommendations for further action_____

_____

_____

Recommendations transmitted to_____

Date transmitted_____

Action taken_____

_____

Appendix E

Checklists for the Evaluation of Grievance Procedures

Their content

Their implementation

Checklist for Evaluating the Content of Grievance Procedures

Listed below are a number of questions which may be used to evaluate the content of Title IX grievance procedures and determine possible needs for modification. Questions are organized into three sections: initiation and filing of the grievance; processing of the grievance; and basic procedural rights.

Initiation and filing of grievances:

Does the grievance procedure:

1. Provide clear and adequate definitions of who may grieve, of what issues may be covered by grievances, and of the terms used throughout the procedure? Yes ☐ No ☐
2. Cover all students and employees? Yes ☐ No ☐
3. Clearly state the form and procedure for filing of grievances? Yes ☐ No ☐
4. Specify any applicable time limits for the initiation of a grievance? Yes ☐ No ☐
5. Provide for assistance to grievants in the filing/preparation/processing of a grievance? Yes ☐ No ☐
6. Specify the responsibilities of institutional/agency staff for the receipt and initial handling of grievances? Yes ☐ No ☐
7. Provide methods for informal and prompt resolution of grievances when further processing is not needed? Yes ☐ No ☐

Processing of grievances:

Does the grievance procedure:

1. State the number and levels of steps for grievance processing and the criteria for initial referral to each level? Yes ☐ No ☐
2. State the form of grievance presentation and processing (oral/written; hearing officer/hearing panel; etc.) at each step? Yes ☐ No ☐
3. Specify the criteria and procedure for the assignment of initial hearing levels? Yes ☐ No ☐
4. Delineate procedures and responsibilities for notification of all parties at each processing level? Yes ☐ No ☐
5. Delineate timelines for all activities within the grievance procedure? Yes ☐ No ☐
6. Specify the procedures which shall be used in conducting grievance hearings? Yes ☐ No ☐
   - —amount of time allocated to each hearing? Yes ☐ No ☐
   - —amount of time allocated to each party to the grievance? Yes ☐ No ☐
   - —right of each party to representation and assistance? Yes ☐ No ☐
   - —right of each party to present witnesses and evidence? Yes ☐ No ☐
   - —right of each party to question witnesses? Yes ☐ No ☐
   - —roles of persons involved in the hearing? Yes ☐ No ☐
   - —right of grievant to determine whether hearing shall be open to the public? Yes ☐ No ☐
   - —provisions/requirements for recording the hearing? Yes ☐ No ☐
7. Specify any requirements for submission of written information by grievants or respondents? Yes ☐ No ☐
8. State the form and timelines for the preparation of grievance decisions? Yes ☐ No ☐

9. Clearly state the procedures and timelines for the grievant's acceptance or appeal of grievance decisions? Yes ☐ No ☐

10. Specify the roles and selection of persons involved in grievance processing? Yes ☐ No ☐

Basic procedural rights:

Does the grievance procedure:

1. Provide grievants with the right to appeal to progressive levels of decisionmaking? Yes ☐ No ☐

2. Provide assurances regarding the impartiality of hearing officers? Yes ☐ No ☐

3. Provide for confidentiality of grievance proceedings if so desired by the grievant? Yes ☐ No ☐

4. Provide for grievants' access to relevant institutional/agency records? Yes ☐ No ☐

5. Provide for the protection of grievants and respondents from harassment and entry of information into student and personnel files? Yes ☐ No ☐

6. Provide for confidentiality of grievance records if so desired by the grievant? Yes ☐ No ☐

Checklist for Evaluating the Implementation of a Grievance Procedure

The following checklist focuses on the implementation of Title IX grievance procedures. It is designed to be used as a guide for assisting Title IX coordinators and administrators in the installation of a grievance process or the improvement of the operation of an existing process.

Pre-implementation:

1. Has a written Title IX grievance procedure been prepared which provides for the prompt and equitable resolution of complaints of sex discrimination? Yes ☐ No ☐

2. Has the Title IX grievance procedure been reviewed to ensure its compliance with any existing standards specified by relevant State and local laws/regulations, contracts with employee organizations, etc.? Yes ☐ No ☐

3. Has the Title IX grievance procedure been reviewed and approved by institutional/agency governance? Yes ☐ No ☐

4. Has the grievance procedure or a summary of the procedure been published and disseminated to all students and employees? Yes ☐ No ☐

5. Have orientation or briefing sessions been held with students and employees to ensure their understanding of the grievance procedure and its use? Yes ☐ No ☐

6. Have all employees with responsibility for the implementation of the procedure been provided briefing and information on the procedure and the requirements of the Title IX regulation? Yes ☐ No ☐

7. Have persons serving as hearing officers been provided with basic orientation on grievance processing and in-depth training on the Title IX regulation, interpretative guidelines, and judicial precedents? Yes ☐ No ☐

8. Have the specific assignments of staff roles and responsibilities been made for all tasks within the grievance procedure? Yes ☐ No ☐

9. Have the responsibilities of the Title IX coordinator been delineated and a statement of these disseminated to all employees and students? Yes ☐ No ☐

10. Is the grievance procedure available for allegations of sexual harassment? Yes ☐ No ☐

Filing and initial processing of grievances:

1. Is information regarding the nature of the grievance procedure and the coverage of the Title IX regulation easily available to all employees and students? Yes ☐ No ☐

2. Has a form or outline been developed which clearly states the information required for the filing of a grievance? Yes ☐ No ☐

3. Can students and employees file grievances at places of maximum convenience and accessibility? Yes ☐ No ☐

4. Are personnel available for assisting students and employees in the filing of grievances? Yes ☐ No ☐

5. Is opportunity provided for the clarification of grievance issues and for prompt and informal resolution of grievances when further processing is not needed? Yes ☐ No ☐

6. Do notification forms used at all grievance stages provide grievants and respondents with full information regarding their rights and responsibilities in the grievance process? Yes ☐ No ☐

Grievance processing:

1. Are timelines and requirements for promptness fully observed in the handling of grievances at each step of grievance processing? Yes ☐ No ☐

2. Are stated notification procedures fully observed? Yes ☐ No ☐

3. Are grievance hearings conducted according to specified procedures? Yes ☐ No ☐

4. Are records of grievance hearings maintained? Yes ☐ No ☐

Grievance follow-up, monitoring, and reporting:

1. Are all grievance decisions reviewed for their implications for modification of policy, procedure, or practice beyond specified corrective steps? Yes ☐ No ☐

2. Are all identified modifications and corrective steps broken down into their specific tasks, staff responsibilities, and implementation timelines? Yes ☐ No ☐

3. Are all staff notified of their specific responsibilities related to the implementation of modifications and remedial steps? Yes ☐ No ☐

4. Are staff provided information and assistance necessary to the implementation of modifications and corrective steps? Yes ☐ No ☐

5. Are periodic surveys and reviews made to assess the implementation of modifications and corrective steps and to identify any related problems? Yes ☐ No ☐

6. Are regular reports regarding the implementation of modifications and corrective steps required of all staff? Yes ☐ No ☐

7. Are records of grievances, grievance processing, and modifications and corrective steps maintained for a three-year period? Yes ☐ No ☐

8. Are all detailed grievance records (those identifying involved parties) maintained on a confidential basis and without notation in student or personnel files? Yes ☐ No ☐

9. Is a set of open records regarding grievance resolutions and precedents (parties unidentified) available to students, employees, and other interested persons? Yes ☐ No ☐

10. Are regular reports of grievance precedents and compliance efforts disseminated to all students, employees, and governance persons? Yes ☐ No ☐

11. Are continuing assessments made of the understanding of students and employees regarding Title IX provisions and the Title IX grievance procedure? Yes ☐ No ☐

Appendix F

Title IX Grievance Handling: Sample Guidelines for Staff

Title IX Grievance Handling: Sample Guidelines for Staff

General perspective.

Questions relating to Title IX compliance and non-discrimination in education are often complex; they require new understandings of the covert and overt ways that many of our long-accepted assumptions, values and behaviors differentiate on the basis of sex. Our understandings of the ways in which sex discrimination occurs in our personal and professional behaviors and in the policies, practices, and programs of our education institutions and agencies are continually evolving. Many individual behaviors and institutional policies or programs may discriminate illegally on the basis of sex without our conscious intent or awareness.

A crucial factor in the success of a Title IX grievance procedure is that all personnel within the institution/agency be helped to gain the understanding that the elimination of sex discrimination is an ongoing responsibility of all staff. A problem-solving climate should be established to support the continuing examination and modification of individual and institutional behaviors which may be discriminatory. Allegations of Title IX violations are a valuable form of personal and institutional feedback. If a grievance has merit, it provides an opportunity to correct a specific problem; if the grievance is without merit, it provides an opportunity to explore the circumstances which may be responsible for the allegation of discrimination.

Some of the basic understandings that facilitate positive implementation of the grievance procedure include:

- ☐ Discrimination against students or employees is a serious problem and all efforts must be made to provide full equity to students and employees. This is both a legal and an educational responsibility of agencies and institutions.
- ☐ The Title IX grievance procedure is a positive, legitimate method of solving those problems related to possible sex discrimination. It assists in the identification of discrimination which, if gone unrecognized by the institution/agency, might jeopardize eligibility for Federal financial assistance and function to deny equality of opportunity to students and employees. Further, it provides a mechanism for developing p- ve programs to correct discrimination.
- ☐ The use of the grievance process is a basic right guaranteed to students and employees by Federal law and regulation.
- ☐ Although being named respondent in a grievance is not a pleasant experience, it can provide important feedback and the opportunity to improve our personal and/or institutional effectiveness.

Suggestions for grievance handling.

Personnel should be assisted in dealing with grievances by observing the following guidelines:

- ☐ Thoroughly familiarize yourself with the written grievance procedure; understand the processing steps, your responsibilities, and the rights of all parties to the grievance.
- ☐ Withhold judgment regarding the validity of the grievance; do not move to a position of denial or defense.
- ☐ Examine the Title IX regulation, and related memoranda, directives, guidelines, or subsequent legislation and identify those portions which are relevant to the grievance.
- ☐ Maintain an open and objective attitude.
- ☐ Raise questions which may assist in the clarification of the facts of the situation.
- ☐ Assist others in identifying and obtaining information that is relevant to consideration of the grievance.
- ☐ Avoid talking about blame, either directly or indirectly.
- ☐ Avoid taking sides or becoming emotionally involved in grievances.
- ☐ Do not express preconceived notions, ideas, judgments or conclusions.
- ☐ Do not predict outcomes.
- ☐ Be supportive of grievants and respondents without becoming overinvolved in the grievance.

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Appendix G

Office for Civil Rights Regional Offices

U.S. Department of Education
Office for Civil Rights
Regional Civil Rights Offices

Region I

CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, VERMONT

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region I
John W. McCormack POCH
Post Office Square, Room 222
Boston, Massachusetts 02109
(617) 223-9662; TTY (617) 223-9664

Region II

NEW JERSEY, NEW YORK, PUERTO RICO, VIRGIN ISLANDS

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region II
26 Federal Plaza, 33rd Floor
New York, New York 10278
(212) 264-4633; TTY (212) 264-9464

Region III

DELAWARE, DISTRICT OF COLUMBIA, MARYLAND, PENNSYLVANIA, VIRGINIA, WEST VIRGINIA

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region III
Gateway Building - 3535 Market Street
Post Office Box 13716
Philadelphia, Pennsylvania 19104
(215) 596-6772; TTY (215) 596-6794

Region IV

ALABAMA, FLORIDA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, SOUTH CAROLINA, TENNESSEE

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region IV
101 Marietta Tower - 27th Floor
P.O. Box 1705
Atlanta, Georgia 30301
(404) 331-2954; TTY (404) 331-2010

Region V

ILLINOIS, INDIANA, MINNESOTA, MICHIGAN, OHIO, WISCONSIN

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region V
401 South State Street - 7th Fl.
Chicago, Illinois 60605
(312) 353-2520; TTY (312) 353-2540

Region VI

ARKANSAS, LOUISIANA, NEW MEXICO, OKLAHOMA, TEXAS

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region VI
1200 Main Tower Building - Suite 2260
Dallas, Texas 75202
(214) 767-3936; TTY (214) 767-3315

Region VII

IOWA, KANSAS, MISSOURI, NEBRASKA

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region VII
P.O. Box 901381
10220 N. Executive Hills Blvd., 8th Fl.
Kansas City, Missouri 64190-1381
(816) 891-8026; TTY (816) 374-7607

Region VIII

COLORADO, MONTANA, NORTH DAKOTA, SOUTH DAKOTA, UTAH, WYOMING

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region VIII
1961 Stout Street, Room 342
Denver, Colorado 80294
(303) 844-5695; TTY (303) 844-3417

Region IX

ARIZONA, CALIFORNIA, HAWAII, NEVADA, GUAM, TRUST TERRITORIES OF THE PACIFIC ISLANDS, AMERICAN SAMOA

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region IX
221 Main Street, 10th Floor
San Francisco, California 94105
(415) 227-8020; TTY (415) 227-8124

Region X

ALASKA, IDAHO, OREGON, WASHINGTON

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region X
2901 3rd Avenue - Room 100
Seattle, Washington 98121-1042
(206) 442-1635; TTY (206) 442-4542

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